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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

16 Cr. 468 (GHW)

5 JAMES GRANT and JEREMY
6 REICHBERG,

7 Defendants.

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8 November 16, 2018
9 9:23 a.m.

10 Before:

11 HON. GREGORY H. WOODS,

12 District Judge
13

14
15 APPEARANCES

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Southern District of New York

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24 BY: JOHN MERINGOLO

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1 (In open court; jury not present)

2 THE COURT: Welcome back. Thank you very much. We're
3 starting a little bit later than I do.

4 I understood there was an issue with transit?

5 MS. NECHELES: I apologize. I had to take my kids to
6 school because we couldn't get a car this morning, and it was
7 all the way to the Upper West Side. So I apologize. It was
8 difficult to get back and --

9 THE COURT: That's fine. Thank you for the apology.
10 I appreciate that. Give me one moment.

11 (Pause)

12 THE COURT: Again, due to our delay, I'm not sure I'll
13 have the opportunity to give you the decision with respect to
14 the experts. I'll put that aside.

15 I would like to talk about the proposed instruction
16 that was sent in by the government this morning. Ms. Necheles,
17 I think I got it around 8:20-something a.m. this morning. I
18 don't know if you had the opportunity to look at it.

19 MS. NECHELES: I saw a draft of it last night. I
20 think it's a little bit different this morning. What I told
21 the government is, with respect to the line about credibility
22 of the witness, I don't believe that there is any authority for
23 that. I asked the government if there was any authority, and I
24 did not hear back from them.

25 With respect to -- I just saw it on the phone. Let me

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1 see if I can pull it up again, unless the government has a hard
2 copy for me.

3 THE COURT: Thank you.

4 Let me see if I can speak to that. I think I
5 understand the concept that the government may be getting at;
6 namely, to help the jury understand what this instruction
7 fundamentally means, what does admitted into evidence for their
8 truth mean.

9 MS. NECHELES: But the problem is it's wrong, Judge.
10 I think it's wrong.

11 THE COURT: Well, let me give you a sense. My
12 proposal was going to be not to do that, and I've spent a
13 little bit of time while waiting for you to get here,
14 Ms. Necheles, thinking about whether or not an illustration of
15 this concept would instead be preferable to help the jury
16 understand what it is that we're talking about here.

17 Let me just give you a for instance, the kind of thing
18 I might say. I'm reminded of the fact that as nonlawyers, some
19 of these concepts, like admitted into evidence for their truth,
20 may be less intuitive.

21 So here is something I could say, just as an example:
22 I'm going to provide you with an example of how this rule works
23 in practice. If in one of the recordings, you heard the listed
24 people say, quote, it's raining outside," you can consider that
25 evidence for the truth of the statement asserted that it was,

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1 in fact, raining at that time. However, if you heard any
2 person other than -- and I would list the names of people --
3 say "it's raining outside" on a recording, you could not
4 consider that statement for its truth. In other words, it
5 would not be evidence that it was raining at the time in
6 question. You could, however, use that statement to place
7 statements by a defendant in context, or to understand the
8 defendant's state of mind, or as evidence that someone said
9 it's raining outside.

10 So I'm just trying to come up with an example to help
11 them understand the concept, which I think may be what was
12 behind the credibility of the statement's comment.

13 MS. NECHELES: I think that's helpful, your Honor.

14 MS. LONERGAN: We agree, your Honor. And I think --
15 and you've exactly laid out why we put that in, because we
16 don't want it to seem like -- we don't want it to appear that
17 the Court is opining on who is a truth-teller and who isn't.
18 And I think the Court's example could be constructive, but I
19 was wondering if you might be able to include one other thing.
20 I don't want to make this super long, but to the extent that
21 the Court's giving an example, because one of the things we
22 talk about is putting the defendant's statements in context or
23 as background, so on the raining example, maybe what the Court
24 could say is if one of the other listed speakers said it's
25 raining outside, you couldn't consider that for the truth of

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1 it, but if the defendant or one of the listed speakers then
2 said, yes, it is, that the other speaker's statement would
3 provide you context for understanding what it was that the
4 defendant was saying when the defendant said, yes, it is, and
5 that you could then use those two statements together to
6 understand that the defendant has said, yes, it is raining
7 outside.

8 And maybe -- I'm sure the Court can come up with
9 something more articulate, but, again, given the Court is
10 providing examples, we thought that might be a helpful example
11 of what it means to place a defendant's statement in context.

12 THE COURT: Thank you.

13 I think that's a good idea. It's getting lengthy. I
14 may not include this, I'll call it, amplification in the
15 instruction in the future iterations of it.

16 Ms. Necheles, what's your view regarding that
17 proposal?

18 MS. NECHELES: So, your Honor, perhaps you will give
19 us something typed up, and I can just look at it and be able to
20 respond.

21 THE COURT: Thank you.

22 MS. NECHELES: Thanks.

23 THE COURT: I think that we're waiting for one juror.
24 Is there anything else that we should talk about now?

25 MS. LONERGAN: Your Honor, just in that what we've

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1 just been discussing, in case it's helpful for the Court, I
2 provided it to defense counsel as well, I have a list of all of
3 the Title III recordings played to date and the ones we
4 anticipate playing today, and that's what this instruction, I
5 think, covers.

6 THE COURT: Thank you.

7 MS. LONERGAN: I can hand this up.

8 THE COURT: Good. Thank you.

9 I have those list of Title III recordings. The
10 introduction to the statement that I will provide won't list
11 all of these. I'll just refer to recordings that they have
12 heard to date and recordings that they expect to hear today.

13 MS. LONERGAN: Yes, your Honor, that wasn't our
14 proposal. This was more for the Court's information. We don't
15 think it's helpful to read this whole list to the jury.

16 THE COURT: Good. Thank you very much. I think this
17 is helpful.

18 Anything else that we should talk about, as I think
19 we're still waiting for one juror?

20 The jury actually is here now. I'll see if I can
21 provide you with a quick typewritten version of the statement.

22 MS. NECHELES: Thank you.

23 If we can know who the next witness is? We know it's
24 one of three, but it would help us be organized here.

25 MS. LONERGAN: Avi Goldstein after Richard -- Richard

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1 Ochetal, then we may play some calls, then Avi Goldstein.

2 MS. NECHELES: Thank you.

3 THE COURT: Any concerns about asking Mr. Ochetal to
4 come in now just to short-circuit that process step?

5 MR. BELL: No, Judge.

6 THE COURT: Great.

7 Can we please bring in Mr. Ochetal.

8 Counsel, can I have this typewritten instruction
9 handed to the parties during the testimony?

10 MS. NECHELES: Thank you, your Honor. That would
11 be --

12 MR. BELL: Sure, your Honor.

13 THE COURT: Good. Thank you. Let's proceed.

14 Mr. Daniels.

15 (Continued on next page)

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Ochetal - Direct

1 (Jury present)

2 THE COURT: Thank you, ladies and gentlemen. You can
3 be seated.

4 So, ladies and gentlemen, thank you very much for
5 making it here through the snow and windy weather. We're going
6 to start again.

7 Counsel for the United States, can you please bring
8 forth Mr. Ochetal?

9 MS. RAVENER: Yes. Thank you, your Honor. We'll do
10 so.

11 THE COURT: You can be seated.

12 Mr. Ochetal, let me remind you that you remain under
13 oath.

14 THE WITNESS: Yes, sir.

15 THE COURT: Thank you.

16 You can proceed, counsel.

17 MS. RAVENER: Thank you very much, your Honor.

18 RICHARD OCHETAL, resumed.

19 DIRECT EXAMINATION CONTINUED

20 BY MS. RAVENER:

21 Q. Good morning, Mr. Ochetal.

22 A. Good morning.

23 Q. Mr. Ochetal, when we left off yesterday, we were talking
24 about some of the essential requirements for certain kinds of
25 licenses at the license division. Do you remember those

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Ochetal - Direct

1 questions?

2 A. Yes.

3 Q. And we were specifically talking about the period when --
4 the first five years that you worked in the license division
5 prior to the time when you got involved with any kind of
6 bribery scheme. Do you recall that?

7 A. Yes.

8 Q. We talked about some of those requirements, including a
9 letter of necessity; is that right?

10 A. Yes.

11 Q. And financial documents?

12 A. Yes.

13 Q. I believe you also mentioned utility bills; is that right?

14 A. Yes.

15 Q. Why would utility bills be required specifically for a
16 business carry or full carry license?

17 A. Simply a utility bill is just to verify the business
18 address.

19 Q. In the course of your duties, did you regularly gather all
20 of these kinds of documents when performing your job?

21 A. Yes.

22 Q. I believe we also talked about that interviews were had; is
23 that right?

24 A. Yes.

25 Q. What kind of gun licenses required an interview of the

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Ochetal - Direct

1 applicant?

2 A. Any type of license required an interview.

3 Q. Again, during the time that you were performing your job,
4 following the rules for those five years, did you interview
5 applicants?

6 A. Yes. It was required.

7 Q. Did you follow those rules?

8 A. Yes.

9 Q. Have you ever heard of a safeguard letter?

10 A. Yes.

11 Q. What is a safeguard letter?

12 A. A safeguard letter is a letter from the applicant letting
13 the license division know if something should happen to the
14 applicant or licensee, who would take care of the firearm in
15 case they are sick, injured, deceased, or anything like that.

16 Q. Under the rules, could you approve a gun license without a
17 safeguard letter?

18 A. It was a requirement, so, no.

19 Q. Have you heard of a cohabitant letter?

20 A. I have.

21 Q. What is a cohabitant letter?

22 A. A cohabitant letter is a letter from any individual living
23 with the applicant who is over 18, who is going to have an
24 acknowledgment of the fact that there will be a firearm in the
25 home of the applicant.

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1 Q. In your understanding, what was the purpose of a cohabitant
2 letter?

3 A. The purpose of that letter, in my understanding, was that
4 everybody in that household knew that there would be a firearm
5 in that house. I believed it to be a safety issue for various
6 reasons. One would be if police officers came to a location,
7 that everybody in that house would know that there was a
8 firearm in the confines of that location.

9 Q. Are there forms for these things, the safeguard letter, the
10 cohabitant letter, and the like?

11 A. Yes.

12 Q. Where did people get those forms?

13 A. They were part of the application that was available to
14 download and print online.

15 Q. Under the rules, did you need a cohabitant letter before
16 you could approve a license?

17 A. Yes.

18 Q. Again, putting aside the times when you were taking bribes,
19 did you require these things before you approved a license?

20 A. Yes.

21 Q. In your experience, for applicants who were following the
22 rules, about how long did it take to get a full carry, or
23 business carry, license?

24 A. Usually it took about six months, maybe a year.

25 Q. Why did it take so long?

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1 A. It took a long time just based on the amount of time
2 invested into the investigation. Like there was a lot of steps
3 to the investigation.

4 Q. Specifically, had you ever handled an application before
5 for a full carry that had no connection to bribery or any other
6 kind of outside influence on your decision?

7 A. Yes.

8 Q. How many times had you done that?

9 A. Handled just an application?

10 Q. How many times have you handled applications for full
11 carries that had no connection whatsoever --

12 MS. NECHELES: I object.

13 Q. -- to bribery?

14 MS. NECHELES: For form.

15 THE COURT: Thank you.

16 Can you please rephrase the question?

17 MS. RAVENER: Certainly, your Honor.

18 BY MS. RAVENER:

19 Q. Approximately how many times had you handled applications
20 for full carries that were not part of any kind of bribery
21 scheme prior to the time when you started taking bribes?

22 MS. NECHELES: Objection, your Honor.

23 THE COURT: Thank you.

24 You can answer the question.

25 THE WITNESS: Several times. I mean, there were a

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1 handful of applicants that applied for carry business licenses
2 or limited carry licenses.

3 BY MS. RAVENER:

4 Q. During that time, about how many gun license applications
5 overall did you handle?

6 A. You mean in that, like, five-year period?

7 Q. Yes.

8 MR. MERINGOLO: Objection.

9 THE COURT: Thank you.

10 You can answer the question.

11 THE WITNESS: Hundreds.

12 Q. So is it fair to say there weren't that many full carry gun
13 license applications that you had to thoroughly vet because
14 there weren't that many applicants at all?

15 MS. NECHELES: Objection. He just said hundreds.

16 THE COURT: Thank you.

17 Can you please rephrase the question?

18 MS. RAVENER: Sure.

19 Q. Out of the hundreds of applications that you handled during
20 those years, is it fair to say that only a small number were
21 full carry licenses?

22 MR. MERINGOLO: Objection; leading.

23 THE COURT: Thank you.

24 You can answer the question.

25 THE WITNESS: Yes.

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1 BY MS. RAVENER:

2 Q. Of those, about how many do you remember approving
3 yourself?

4 A. It might have been a couple, but offhand, I can probably
5 remember maybe one, if we're talking about that time period.

6 Q. How long did it take you to work on that application?

7 A. At least six months.

8 Q. Why did it take so long?

9 A. A couple of reasons. One was the amount of time spent on
10 the investigation and also the amount of caseload we had. So
11 it took a long time because we had to do an extensive
12 background check and extensive check on the background of the
13 business associated with the license that the applicant was
14 applying for.

15 Q. Now, for this one that you approved, was it ultimately
16 approved overall by the license division?

17 A. Ultimately, it was.

18 Q. And what are some of the things you did to vet that
19 application before you approved it?

20 A. Well, first and foremost, I had to do a criminal background
21 check, which goes with any license, so a fingerprint response
22 check, domestic violence check, order of protection, basically
23 find out any criminal history first. Then moving on to the
24 business aspect associated with why they wanted this particular
25 license, we would require bank statements. I would also

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1 require utility bills, photos of the business, inside and out,
2 photos of the safe, letters, like contract letters of people
3 that they would conduct business with, tax returns, utility
4 bills, crimes against the business. The letter of necessity
5 would need to be there, character reference letters, which was
6 also part of a regular license anyway. That's kind of a
7 handful of documents I can remember that were required.

8 Q. Did you work hard on the application?

9 A. On this one?

10 Q. Yes.

11 A. Yeah.

12 Q. What's the point of doing all that work?

13 A. It was required. It was just part of the investigation
14 process just to validate the proper cause. You know, there
15 could be safety concerns, does this person really need access
16 to a firearm for a full carry for all day, all night. So that
17 was part of the process of the investigation, to find out,
18 based on the documents they provided, why they really would
19 need that firearm.

20 Q. At the time, did you know all of those rules for proper
21 cause well?

22 A. Can you repeat that?

23 Q. At the time you were working at the license division, did
24 you know all of the rules well?

25 A. Very well.

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1 Q. And did you apply them, putting aside any bribery?

2 A. Very well.

3 Q. After you worked on, investigated, an application, did you
4 make a decision as to whether to approve or deny the gun
5 license at your level?

6 A. Yes.

7 Q. What would you do to reflect your decision?

8 A. I would first do a writeup explaining why I approved the
9 license for the specific license they applied for. After that,
10 going to our computer system and make my first approval for a
11 recommendation if I believed they were going to be approved.

12 Q. You used the term "first approval." What do you mean by
13 that?

14 A. That's just my level of approval. After I gather the
15 information, review it, make a determination of I think they
16 qualify for the specific license, it's reflected in my writeup,
17 and then I reflect it in the computer system, and then it's
18 forwarded to a supervisor to review it.

19 Q. What was that computer system called, by the way?

20 A. ALPS.

21 Q. To be clear, when you made a first approval decision at
22 your level, was that a decision made by you as part of your job
23 as a police officer?

24 A. Yes.

25 Q. What would happen next after you made a first approval

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1 decision?

2 A. I would give the entire file to whoever at the time would
3 be my supervisor to review the case file, read my writeup and
4 my decision, review all the paperwork, and make their decision
5 if they agree with my decision or not.

6 Q. In order to actually issue or print a license, did a
7 supervisor also have to make an approval?

8 A. Yes.

9 Q. And who were some of the supervisors in your chain of
10 command? What were their positions?

11 A. Sergeants and lieutenants, inspectors.

12 Q. About how long did you work in the new application section
13 in the license division?

14 A. About five or six years. I worked in that section till
15 about 2015. So from 2009 to 2015.

16 Q. Around then, where did you go next?

17 A. I went to the incidents section.

18 Q. What is the incidents section?

19 A. The incidents section is a unit in the license division
20 that handles any licensees that have gotten into any kind of
21 trouble.

22 Q. What were your duties in the incidents section?

23 A. My duties there were to review a case where a licensee got
24 into some sort of trouble, whether they got arrested, or
25 accused of domestic violence, or anything that was deemed

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1 inappropriate conduct for a licensee. We would review it and
2 make a determination on whether or not they should have their
3 license either returned to them, suspended, or revoked.

4 Q. Who was your direct boss in the incidents section?

5 A. Sergeant Villanueva.

6 Q. About how long did you work in the incidents section?

7 A. I'd say about a year.

8 Q. So that's until sometime in 2016?

9 A. About.

10 Q. And what happened in 2016?

11 A. Early on in 2016, I was transferred to the renewal section.

12 Q. Was renewals still part of the license division?

13 A. Yes.

14 Q. Generally speaking, why were you transferred to renewals?

15 A. At this point, I remember there being an email that was
16 sent to Inspector Endall and other high-ranking members --

17 Q. And, Mr. Ochetal, let me pause you. Without getting into
18 anything the email said, were there concerns at the license
19 division that caused your transfer to renewals?

20 A. There were concerns, but this email sort of solidified
21 those concerns.

22 Q. And, generally speaking, what were the concerns about?

23 A. The concerns were about that there was consultants getting
24 help with applicants.

25 Q. Were the consultants you referred to now the same people

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1 who were paying bribes to you and others?

2 A. Yes.

3 Q. Mr. Ochetal, we talked about the way that you did your job
4 before you started taking bribes.

5 After you started taking bribes, did your work change?

6 A. Yeah.

7 Q. How so?

8 A. I -- I would say I just didn't follow the rules to the T
9 like I used to be doing.

10 Q. Did you do that for all the applications on your desk or
11 just the ones where you were taking bribes?

12 A. I mean, just the ones at that point where I was taking
13 bribes from.

14 Q. For the licenses where you took bribes, can you tell us
15 about some examples of how you bent the rules?

16 A. Yeah. Some of them would not have all the paperwork
17 necessary, so, you know, I would do my best to get it after the
18 fact of the license being issued, knowing who they were
19 associated with, obviously. At times, I would let it be known
20 that, hey, the fingerprints aren't back yet, and a couple of
21 times it was, hey, we'll do a soft background check because we
22 had access to it, and we would do that. So that was just a
23 couple of ways on how we did it.

24 Q. And, in general, did you start approving licenses that
25 didn't have proper paperwork in exchange for bribes?

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1 A. Yes.

2 Q. How did you come to meet Jeremy Reichberg?

3 A. Just met him through my work in the license division.

4 Q. Do you remember meeting him?

5 A. Yes.

6 Q. What happened that day when you met Jeremy Reichberg? Did
7 you know he was coming?

8 A. I was told he was coming.

9 Q. By whom?

10 A. I received a text message from Sergeant Villanueva.

11 Q. In general, what information did you have before you met
12 Mr. Reichberg?

13 A. I just received the text message from Dave that he said
14 Jimmy Grant's got a guy coming in, his name is Jeremy
15 Reichberg, you know, and take care of him. So I was in the
16 office, and I waited for him to come in.

17 Q. Let me pause you. What does it mean to take care of
18 someone?

19 A. I guess, in general, it would be the same way we took care
20 of consultants' clients.

21 MS. NECHELES: Objection to the guess, your Honor.

22 THE COURT: Thank you, counsel.

23 Can you reframe the question?

24 BY MS. RAVENER:

25 Q. You used the phrase "take care of him." What do you mean

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1 by "take care of him"?

2 MS. NECHELES: Your Honor, object to the form.

3 THE COURT: Thank you.

4 You can answer the question.

5 MS. NECHELES: What he understood then?

6 THE COURT: Thank you.

7 You can answer the question, Mr. Ochetal.

8 THE WITNESS: "Take care of" was kind of a term of red
9 carpet treatment that was known, just not make somebody wait to
10 be fingerprinted, you know, bring them in right away, that kind
11 of thing.

12 BY MS. RAVENER:

13 Q. Where did you develop that understanding of what it meant
14 to take care of someone?

15 A. I don't know. It just kind of at some point when all of
16 this became common practice.

17 Q. What do you mean by "all this"?

18 A. At this time period we're discussing where consultants were
19 bringing people. That was the time period I'm discussing.

20 Q. You mentioned you were told Reichberg was Jimmy Grant's
21 guy, correct?

22 A. Yes.

23 Q. Who did you understand Jimmy Grant to be?

24 A. I understood Jimmy Grant to be a high-ranking member of the
25 police department.

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1 Q. Had you met him before?

2 A. I'd say a couple of times.

3 Q. Where?

4 A. Just working in the license division.

5 Q. When you saw Jimmy Grant in the license division, what was
6 he typically doing, to your observations?

7 A. Just talking to people.

8 Q. Anyone in particular?

9 A. I would have seen him talking to Sergeant Villanueva,
10 Inspector Endall, maybe others. So he was just really there
11 conversing.

12 Q. Did you know what they were talking about?

13 A. No.

14 Q. Did Jeremy Reichberg actually come into the license
15 division that day after you were told he was coming?

16 A. Yes.

17 Q. Was he alone?

18 A. No.

19 Q. Who was with him?

20 A. He was with another guy.

21 Q. Who was that other guy?

22 A. A guy named Jona Rechnitz.

23 Q. What did you do when Jeremy Reichberg and Jona Rechnitz
24 came to the license division that day?

25 A. Met them out in the hallway and brought them in towards my

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1 desk.

2 Q. Did they wait on line?

3 A. No.

4 Q. What did you do when you got to your desk with Jeremy
5 Reichberg and Jona Rechnitz?

6 A. I just remember them putting their -- or license
7 information into the computer on his application.

8 Q. So did Jeremy Reichberg have an application at that point
9 in time?

10 A. Yes, he had an application.

11 Q. Did it contain certain information?

12 A. Yes.

13 Q. You said you put that information into the computer; is
14 that right?

15 A. I did.

16 Q. Where did you get the information that you put into the
17 computer?

18 A. From what was ever on the application.

19 Q. And who gave you that application?

20 A. Mr. Reichberg.

21 Q. What did Jeremy Reichberg say to you during this process?

22 A. I mean, after I put his information in the computer, I did
23 remember him saying -- while I was fingerprinting him, because
24 that was the next step, he said he got -- that he had got Jimmy
25 Grant promoted, and he said to me that he was -- after this,

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1 was going up to the chief of department's office and just
2 wanted to know if this would be done when he came back down.

3 Q. Let me pause you there. What does it mean to go to the
4 chief of department's office?

5 A. I don't know. I mean --

6 Q. Let me ask you a different way. Within the New York City
7 Police Department, who is the chief of department? What does
8 that role mean?

9 A. I mean, there's the commissioner, and then there's the
10 chief of the department, so I guess he's like second in command
11 or first in command, as far as wearing a uniform.

12 Q. Do you remember who the chief of department was at the
13 time?

14 A. At the time, it was Chief Banks. He said he knew Chief
15 Banks, so when he said he was going up there, I -- you know, I
16 assumed that's where he was going.

17 Q. When you say he knew Chief Banks, who are you talking
18 about? Who told you that they knew Chief Banks?

19 A. Mr. Reichberg.

20 Q. Now, correct me if I get this wrong, but I believe you also
21 stated that Mr. Reichberg asked you whether this will be done
22 when he comes back?

23 MR. MERINGOLO: Asked and answered.

24 Q. Something along those lines?

25 THE COURT: Thank you.

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1 You can answer the question.

2 THE WITNESS: Yes.

3 BY MS. RAVENER:

4 Q. What did you understand that question to be asking you?

5 A. I kind of thought at the time it meant his license would be
6 done.

7 Q. How did you react to that?

8 A. I mean, I was just surprised that he said it, seeing -- to
9 me, it just came off like -- I would use the word, like,
10 arrogant, but I also thought it meant -- like to me, it meant
11 he was a big shot because he's going up to -- I mean, I don't
12 go up there, so that's how it came off to me.

13 Q. Had you ever had a person come in and ask for a gun license
14 on the same day as their application before?

15 A. No, not that I remember.

16 Q. What about for a full carry gun license?

17 A. No.

18 Q. Based on what you knew, did Mr. Reichberg have any
19 experience with owning a gun?

20 A. No.

21 Q. Based on what you knew, did Mr. Reichberg have any training
22 in owning a gun?

23 MR. MERINGOLO: Objection.

24 THE COURT: Thank you.

25 You can answer the question.

IBGKGRA1

Ochetal - Direct

1 THE WITNESS: I did not know him to have any training.

2 BY MS. RAVENER:

3 Q. So how did you respond to Mr. Reichberg's request?

4 A. Like I said, I was shocked that he said it, surprised that
5 he would say it, but I didn't, you know, fight back or
6 anything. I just said, hey, all I know is that we need to get
7 your fingerprints back before anything.

8 Q. You mentioned that Mr. Reichberg had brought an
9 application. Do you remember whether he had any other
10 paperwork with him that day?

11 A. I don't remember exactly what he had.

12 Q. Based on what you can recall, had he brought all the
13 paperwork that was necessary for a full carry gun license?

14 A. For a full carry license? No.

15 Q. What kind of license was he applying for?

16 A. A carry business, or full carry.

17 Q. Did you speak to Mr. Reichberg about the paperwork
18 required?

19 A. I believe I did mention that he needed additional
20 paperwork, yes.

21 Q. What was his reaction back to you?

22 A. His reaction seemed poised, I guess, as if he would get it
23 and didn't seem bothered, I guess.

24 Q. Did he take any notes about what was required?

25 A. I don't remember him taking notes.

IBGKGRA1

Ochetal - Direct

1 Q. What impression did Mr. Reichberg's behavior give you?

2 A. In totality, the impression I got was that -- like I said,
3 that he was some sort of a big shot. I didn't know him on any
4 level, but -- so maybe he was, maybe he wasn't, but the
5 impression I got was he was somebody of some kind of
6 importance.

7 Q. What happened next, after you had this conversation with
8 Mr. Reichberg in the license division? Did he leave the
9 license division at that point, or did something else occur?

10 A. Well, he left to go, I'm assuming, wherever he said he was
11 going to, and then eventually came back in to the license
12 division.

13 Q. Was that the same day or a different day that he came back?

14 A. That was on the same day. I can't recall how much time had
15 elapsed. He went where...

16 Q. When he came back, where were you?

17 A. I was at my desk.

18 Q. What did you see Mr. Reichberg do when he returned to the
19 license division?

20 A. I just saw him walking to Inspector Endall's office.

21 Q. Can you remind us, who is Inspector Endall?

22 A. He's pretty much the boss of the license division.

23 Q. Where was your desk in relation to Inspector Endall's
24 office?

25 A. I don't know. I'd estimate maybe 60-some-odd feet away,

IBGKGRA1

Ochetal - Direct

1 maybe more.

2 Q. When Mr. Reichberg returned, did he walk by you in order to
3 go to Inspector Endall's office, or were you located somewhere
4 else?

5 A. Well, he would have had to have passed me, yes.

6 Q. Did you see him do that?

7 A. Yes.

8 Q. What happened next?

9 A. After that, he was inside Inspector Endall's office. I do
10 not remember how much time passed. And eventually he came back
11 out.

12 Q. Did you speak with Mr. Reichberg again that day?

13 A. I would say so. I think -- I'm sure he said bye. I'm sure
14 he understood that he needed some kind of some additional
15 paperwork and, you know, eventually walked out.

16 Q. Did you speak with Inspector Endall that day?

17 A. Yes. At some point, he came out of his office. I believe
18 we both had an understanding that we needed fingerprints --

19 MS. NECHELES: Objection, your Honor.

20 THE COURT: Thank you.

21 You can continue.

22 THE WITNESS: In the conversation I had with Inspector
23 Endall, we understood that we needed his fingerprints to come
24 back and additional paperwork. I mean, I would say that was
25 the gist of the conversation.

IBGKGRA1

Ochetal - Direct

1 Q. I'd like to show you what's in evidence as Government
2 Exhibit 732.

3 Do you recognize this?

4 A. Yes.

5 Q. And what is it?

6 A. It looks like an ALPS printout of an application.

7 Q. What is the name on the application?

8 A. The name is Jeremiah Reichberg.

9 Q. What's the application date?

10 A. It is 8/21/2014.

11 Q. What's the application type?

12 A. Business carry.

13 Q. Do you know who entered this information into this record
14 or into the computer system that maintains this record?

15 A. That would be me.

16 Q. And where did you get that information from that we see
17 here?

18 A. This information is received from the application of the
19 applicant.

20 Q. Let's turn to the field marked "Business Address." Do you
21 see that?

22 A. I do.

23 Q. And do you see corporate name or corp. name?

24 A. Yes.

25 Q. What does it say there?

IBGKGRA1

Ochetal - Direct

1 A. It says, "Taly Diamonds Ltd."

2 Q. Do you see the field marked "Business Description"?

3 A. It says, "wholesale diamonds."

4 Q. Where did you get that information from?

5 A. Just the same thing, on the application.

6 Q. Who gave you that application?

7 A. Mr. Reichberg.

8 Q. In your dealings with Mr. Reichberg, did you speak with him
9 about what he did for a living?

10 A. I remember him mentioning he was in the diamond business.

11 Q. Would that matter for his application?

12 A. I mean, anything would matter. It just came down to
13 proving proper cause. So it could matter.

14 (Continued on next page)

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IBGTGRA2

Ochetal - Direct

1 BY MS. RAVENER:

2 Q. Does the business name matter when you're reviewing a gun
3 license application?

4 A. The business name matters, it's just we use the business
5 name to verify the validity of it.

6 Q. And does the kind of business matter when deciding whether
7 to approve a business carry or full carry gun license?

8 A. It would.

9 Q. Why?

10 A. Because certain businesses are known to be targets of say
11 armed robbers. Some businesses deal with high volumes of cash,
12 could even be jewelry, it could be anything that's of high
13 value, but it has to be some significance to what it is they're
14 doing in handling that makes them a target of why they need
15 protection.

16 Q. So to be clear, would any kind of business of New York City
17 always qualify for a full carry gun license?

18 A. No.

19 Q. What are some of thing things you look for to decide if the
20 business does qualify?

21 A. Well, you have to know -- could be the amount of locations,
22 the hours of operation, crimes against the business, obviously
23 we have to verify the business through several means, just some
24 of the factors.

25 Q. For this application, did you ever verify whether

IBGTGRA2

Ochetal - Direct

1 Mr. Reichberg's employment at this business was real?

2 A. No.

3 Q. Was it part of your job to do that?

4 A. It should have been, yes.

5 Q. Why didn't you do it?

6 A. I understood it wasn't completely necessary.

7 Q. Where did that understanding come from?

8 A. Well, I knew that this applicant was in some way, shape or
9 form connected to James Grant, connected to Inspector Endall as
10 well, so I reached an understanding that what I was used to
11 wouldn't really come into play.

12 Q. Was there ever a time that you asked for additional
13 paperwork on this license?

14 A. I asked for some paperwork, yes.

15 Q. And what happened?

16 A. I believe I did receive some paperwork.

17 Q. Do you believe that ultimately all the required paperwork
18 was supplied?

19 A. Probably not all, no.

20 Q. Why do you say that?

21 A. I just knew that some paperwork was there, and as far as
22 how exactly legitimate it was to the business did not matter.

23 Q. Why didn't it matter?

24 A. Because I was under the assumption it was going to get
25 approved one way or another.

IBGTGRA2

Ochetal - Direct

1 Q. Where did you get that belief?

2 A. Well, the belief was told to me when Inspector Endall told
3 me to wrap up the case.

4 Q. So let's talk about that. What decision did you ultimately
5 make about Reichberg's gun license application?

6 A. Ultimately I approved it.

7 Q. Why did you approve it?

8 A. There was just a day where --

9 MS. NECHELES: Your Honor, this has been asked and
10 answered.

11 THE COURT: It's fine, counsel, you can proceed.

12 You can answer the question, Mr. Ochetal.

13 A. There was just a day where Inspector Endall came out of his
14 office and instructed me on approving Jimmy Grant's guy,
15 Mr. Reichberg, for his license.

16 Q. How do you recall Inspector Endall conveying that to you?

17 A. He simply came out and said: Wrap up Jimmy Grant's guy,
18 Mr. Reichberg.

19 And I was like: No problem, boss. It's going for a
20 full?

21 He said: Yes, full. Give it to Dave.

22 That's what I did.

23 Q. Why did you ask Inspector Endall: Is it for a full?

24 A. Well, because I wanted to know what I was approving it for,
25 just based on prior experience dealing with applicants that

IBGTGRA2

Ochetal - Direct

1 might have been brought in, and it just seemed like usually
2 they had limited carries, so I didn't want to make that
3 mistake. So I verified with him what type of license he wanted
4 him to be approved for.

5 Q. What did you understand "full" to mean?

6 A. That it was for a carry business.

7 Q. And what instruction did Inspector Endall give you in
8 response to your question: Is it for a full?

9 A. He said: Yes, for a full.

10 Q. And you mentioned Inspector Endall also instructed you give
11 it to Dave. Am I getting that right?

12 A. Yes.

13 Q. What did you understand that to mean?

14 A. That just meant at that point to give it to him to give it
15 a license number.

16 Q. If you hadn't received that instruction, would you have
17 approved Jeremy Reichberg's gun license for a full carry at
18 that time?

19 A. No, not at that time.

20 Q. Why not?

21 A. Not everything was there. Just based on prior experiences
22 of people applying for full carry and getting them, if a review
23 process actually took place, it wouldn't have passed.

24 Q. Based on your experience at the license division, if Jimmy
25 Grant was not involved, would you have approved Jeremy

IBGTGRA2

Ochetal - Direct

1 Reichberg for a full carry?

2 MR. MERINGOLO: Objection.

3 THE COURT: Thank you. You can answer the question.

4 A. I mean I wouldn't.

5 Q. Why not?

6 A. I approved it based on Inspector Endall giving me
7 instructions of who it was, and so I did it.

8 Q. Did Inspector Endall ask for your judgment as to whether
9 this license should be approved based on the merits?

10 A. No, there was no actual review of the file, and I knew
11 that.

12 Q. Let's go back to Government Exhibit 732 for a moment, if we
13 can.

14 If we could look at the area that says license permit
15 details, what does it say under type?

16 A. Business carry.

17 Q. What does it say under status?

18 A. Approved.

19 Q. What does it say under first issued date?

20 A. 10/29/2014.

21 Q. What does first issued date mean in this kind of record?

22 A. In this record it would be indicating when the license was
23 first issued or printed out.

24 Q. And who had to approve the license before it could be
25 issued or printed out?

IBGTGRA2

Ochetal - Direct

1 A. Systematically at least two people.

2 Q. Would you be one of those people?

3 A. I would be the first.

4 Q. And who else?

5 A. Sergeant Villanueva or another supervisor.

6 Q. Who were some of those supervisors at the time who could
7 have been involved in this?

8 A. Either Lieutenant Paul Dean or Inspector Endall himself.

9 Q. Now turning back to the application date --

10 MS. RAVENER: Could we highlight that as well?

11 Q. Do you see that?

12 A. Yes.

13 Q. So about how much time passed between the time Jeremy
14 Reichberg actually put in an application for this gun license
15 and the time that it was approved?

16 A. About two months.

17 Q. What was going on with this application over those two
18 months?

19 A. Nothing much. I don't know.

20 Q. Why did it take two months?

21 A. I believe mainly because we were waiting for a fingerprints
22 response to come back.

23 Q. Why were you waiting for the fingerprint response to come
24 back?

25 A. Just part of normal procedure.

IBGTGRA2

Ochetal - Direct

1 Q. And you didn't follow all of the normal required procedures
2 for this gun license, correct?

3 A. No.

4 Q. So why did you wait for the fingerprints?

5 A. I don't really remember that. I figured we at least needed
6 that.

7 Q. Why would you at least need fingerprints? What do they
8 show?

9 A. Criminal history.

10 Q. Now you testified that this application -- well, I'm sorry,
11 let me back up. At the time of this application, do you
12 remember what was going on with the fingerprint systems at the
13 license division that you relied on?

14 A. At that time and for a while there it was just a long wait
15 to get them back. I guess -- I don't know the actual reason,
16 but we just weren't getting them back at a normal rate.

17 Q. It was taking longer than it typically had, is that right?

18 A. Yes.

19 Q. And looking at Government Exhibit 732, you testified that
20 Mr. Reichberg's license was approved in about two months, is
21 that right?

22 A. Yes.

23 Q. Now how does that speed compare with the time it typically
24 takes to process a business carry license application?

25 A. Typically at this point we're looking at six months,

IBGTGRA2

Ochetal - Direct

1 minimum, to a year, a lot of times. That also depended on
2 caseload as well.

3 Q. Why did your approval of this license for Jeremy Reichberg
4 go faster than that?

5 MS. NECHELES: Your Honor, asked and answered.

6 THE COURT: Thank you. You can answer the question.

7 A. I was instructed to close it out, and I did.

8 Q. And to be clear, who gave you the instruction to close it
9 out?

10 A. Inspector Endall.

11 Q. Now we talked about the required paperwork. Do you know
12 whether this file had utility bills?

13 A. Maybe, maybe not. I don't remember.

14 Q. Do you know whether it had bank statements?

15 A. Possibly. I don't remember exactly what was there.

16 Q. Do you know whether it had tax returns?

17 A. I don't remember. Possible, but I don't remember.

18 Q. Do you know whether it had safeguard letter?

19 A. It's possible.

20 Q. Do you know whether it had a cohabitant letter?

21 A. That would also be possible.

22 Q. Did it matter to you whether it had all the required
23 paperwork?

24 A. No.

25 Q. Why not?

IBGTGRA2

Ochetal - Direct

1 MS. NECHELES: Your Honor, this is asked and answered.

2 THE COURT: Thank you. It would be nice to move
3 along, but you can answer this question.

4 A. Say it again?

5 Q. Did you check whether this -- well, let me back up and ask
6 it a different way.

7 Based on your review, while you're not certain which
8 documents were in the file, do you know whether this file was
9 complete and had everything required?

10 MR. MERINGOLO: Objection.

11 THE COURT: You can answer the question.

12 A. No.

13 MS. NECHELES: Your Honor, I object.

14 THE COURT: I accept the answer. You can proceed.

15 Q. At the time that you handled this application, do you know
16 what was in the file? Had you been familiar with the file?

17 A. No.

18 Q. Why not?

19 A. It didn't matter that much to me.

20 Q. Why didn't it matter?

21 MS. NECHELES: Your Honor, asked and answered.

22 THE COURT: Sustained.

23 Q. Let's turn to Government Exhibit 733, which I believe is
24 also in evidence. If we could turn to the last page.

25 Mr. Ochetal, do you recognize this?

IBGTGRA2

Ochetal - Direct

1 A. Yes.

2 Q. What is it?

3 A. It's a photocopy of a business carry handgun license.

4 Q. And what does it say at the top?

5 A. Unrestricted concealed carry handgun license.

6 Q. What does it say in bottom dark banner?

7 A. Business carry.

8 Q. What is the name on this license?

9 A. Reichberg, Jeremiah.

10 Q. What does it say on the date issued?

11 A. 11/11/2014.

12 Q. What does it say underneath the address?

13 A. Taly Diamond LTD, management.

14 Q. Now we're seeing this on a photocopy, but what color would
15 this kind of license typically have been?

16 A. The top and bottom where it's shaded in black would have
17 been red.

18 Q. So you see there's a date where it says issued, and it says
19 11/11/2014, you see that?

20 A. Yes, I do.

21 MS. RAVENER: If we could pull up Government
22 Exhibit 732 next to it and highlight the first issued date.

23 Q. Mr. Ochetal, looking at the first issued date of
24 October 29, 2014 and the issue date printed on the license
25 where it says 11/11, November 11, 2014, why are those two dates

IBGTGRA2

Ochetal - Direct

1 different? What's the difference between those kinds of
2 fields?

3 A. The one that says 10/29/14 could be the date the license
4 was issued and printed, and then going back to the one on the
5 photograph of the license says 11/11/2014, that already has a
6 firearm attached to it, so it could have been reprinted and
7 that was the date it was reprinted with the firearm on it.

8 Q. So what happens in the gun licensing process that would
9 cause you to reprint a license with a firearm on it?

10 A. Initially you get a license and there is no firearm on it
11 until you buy one.

12 Q. And what happens when you buy one, when you buy a firearm
13 in New York City?

14 A. When you buy a firearm you bring it into police
15 headquarters to the license division, we inspect it, check the
16 serial number, we put it in the computer, update the file, and
17 then now when we reprint the license the license comes out with
18 the firearm and serial number printed on the back, because
19 initially it doesn't have it until you buy one.

20 Q. And if we could keep both of these up but focus on
21 Government Exhibit 732 and highlight the field that says
22 purchase DT.

23 A. Yes.

24 Q. Do you see that?

25 A. Yes.

IBGTGRA2

Ochetal - Direct

1 Q. What does it say there?

2 A. 10/20/2014.

3 Q. What does that indicate to you?

4 A. It would indicate the date the purchase order was issued.

5 Q. What do you mean by the purchase order?

6 A. The purchase order authorization is the form, pink, small
7 piece of paper that is given to the licensee with the license
8 to go to a gun dealer to purchase a firearm. So on the form
9 you're supposed to write the dates by hand on the top and then
10 when they come back for the gun inspection they bring that form
11 in, enter it in the computer, you're supposed to enter the
12 purchase authorization date amongst other information,
13 including the serial number of the firearm, et cetera.

14 Q. And are you supposed to issue a purchase order before you
15 approve a gun license?

16 A. No.

17 Q. In describing the first issued date, I believe you
18 explained that that's the date that the license was first
19 printed, is that right?

20 A. That would be right.

21 Q. Is it possible that you could have approved a gun license
22 each earlier than a first issued date when you printed the
23 license?

24 A. Yeah, this doesn't -- none of this stuff tells me when it
25 was approved.

IBGTGRA2

Ochetal - Direct

1 Q. Well, can you tell whether you would have had to have
2 approved this license before or after the first issued date?

3 A. It couldn't be after, it would be either on that date or
4 before.

5 Q. Now in your experience in the license division Mr. Ochetal,
6 how common would it be for a first-time applicant to get a full
7 carry gun license in cases that had nothing to do with bribery?

8 MS. NECHELES: Objection.

9 THE COURT: Sustained.

10 Q. How common would it be for a first time applicant to get a
11 full carry license when you were doing your job at the license
12 division?

13 A. Pretty uncommon.

14 Q. Now earlier you mentioned some named Jona Rechnitz, do you
15 remember that?

16 A. Yes.

17 Q. And how did you meet him?

18 A. I remember him accompanied Jeremiah Reichberg into the
19 license division.

20 Q. Do you know whether Jona Rechnitz came back to the license
21 division after that day?

22 A. Eventually I found out he did.

23 Q. How did you learn that?

24 A. Because one day I received his file on my desk.

25 Q. Let me direct to what is in evidence as Government

IBGTGRA2

Ochetal - Direct

1 Exhibit 729. Do you recognize this?

2 And it's a multi-page document. If it's easier to
3 look in your binder before you, Mr. Ochetal, you can do that as
4 well.

5 A. This is just an enclosure index.

6 Q. If we could turn back to the second page, what kind of
7 document do we see here?

8 A. This is just a checklist of items to check off as they are
9 received as required to be in this particular type of an
10 application.

11 Q. And about how many things are checked off?

12 A. Five.

13 Q. And this is an index for a limited carry, is that correct?

14 A. Yes.

15 Q. Was there a similar kind of checklist for a full or
16 business carry?

17 A. It would be very similar, yeah.

18 Q. Let's turn next -- I believe to the next page, but let me
19 see, maybe a little further in. If we could turn to SDNY 12010
20 which says handgun license application at the top.

21 Do you see that there?

22 A. Yes.

23 Q. What's the name here?

24 A. Jona Rechnitz.

25 Q. And can we skip down a little bit to the employment

IBGTGRA2

Ochetal - Direct

1 information.

2 And do you see where it says type of business?

3 A. Yes.

4 Q. What does it say there?

5 A. Type of business, it just says diamonds.

6 Q. And what's the name of the business listed on this one?

7 A. LTR Training LTD.

8 Q. What does it say under business address?

9 A. 580 Fifth Avenue Number 800.

10 Q. What does it say under occupation?

11 A. Manager.

12 Q. Let's turn to the next page, and the page after that, and
13 after that.

14 What does it say at the top of this page?

15 A. It says all applicants for a carry license for use in
16 connection with a business or profession must the answer the
17 following questions in the space provided. If additional space
18 is necessary, continue your letter on reverse side. In all
19 cases the form provided must be used.

20 Number one, a detailed description of the applicant's
21 employment and an explanation of why the employment requires
22 the carrying of a concealed handgun.

23 MS. RAVENER: Let's scroll down on this page to the
24 date.

25 Q. Do you see that date and signature line?

IBGTGRA2

Ochetal - Direct

1 A. Yes.

2 Q. And is there a signature here?

3 A. Yes.

4 Q. What does the date say next to that signature?

5 A. 11/11/2014.

6 MS. RAVENER: Could we pull that up next to Government
7 Exhibit 732, last page.

8 733, last page. I apologize, Mr. Hamilton.

9 Could we focus on the issued date there.

10 Q. How does the date on Mr. Rechnitz's letter of necessity
11 compare to the issued date on Mr. Reichberg's license?

12 A. They are the same date.

13 Q. Turning back to Government Exhibit 729, and if we could
14 turn to page SDNY 12019, what is this kind of document we're
15 looking at here, Mr. Ochetal?

16 A. That is a safeguard form.

17 Q. What is the name of the applicant/licensee?

18 A. That would be Jona Rechnitz.

19 Q. And do you see that there is a date on this document
20 further down where it says signature of person agreeing to
21 safeguard firearms? Do you see the date there?

22 A. I do.

23 Q. What does the date say?

24 A. 11/11/2014.

25 Q. Do you see an area that says witness's name?

IBGTGRA2

Ochetal - Direct

1 A. Yes, I do.

2 Q. What is printed where it says witness's name?

3 A. Jeremiah Reichberg.

4 Q. Let's turn to Government Exhibit 730, which is marked for
5 identification.

6 Do you recognize this?

7 A. Yes, it's an ALPS printout.

8 Q. And is this the same kind of ALPS printout that we were
9 looking at before that you dealt with in the course of your
10 duties in the license division?

11 A. Yes, it's the same.

12 Q. Is it for a different person?

13 A. Yes.

14 MS. RAVENER: Your Honor, the government offers
15 Government Exhibit 730, which is also offered pursuant to
16 stipulation 1704.

17 THE COURT: Thank you. Counsel?

18 MS. NECHELES: No objection.

19 MR. MERINGOLO: No objection.

20 THE COURT: Thank you, I'm accepting Exhibit 730 into
21 evidence.

22 (Government's Exhibit 730 received in evidence)

23 THE COURT: You can proceed.

24 MS. RAVENER: If we could publish 730.

25 Q. Mr. Ochetal, what is the name on this ALPS record?

IBGTGRA2

Ochetal - Direct

1 A. Jona Rechnitz.

2 Q. What does it say next to application date?

3 A. 11/12/2014.

4 Q. And what does it say under application type?

5 A. Limited carry.

6 Q. Do you know why Mr. Rechnitz was applying for a different
7 kind of license from Mr. Reichberg, a limited carry instead of
8 a business carry?

9 A. I believe they were associated in the same business, so it
10 was common practice that if two people were in fact in the same
11 business not both would have a full carry.

12 Q. And when you refer to common practice, what do you mean?

13 A. By the rules, just there was no need to have two full
14 carries for the same exact business.

15 Q. So if two people from the same business applied for a full
16 carry, what would you typically tell them?

17 A. If one of them qualified for a full, there would only be
18 one, and then the other may get a limited carry, or both might
19 get the limited carry, it all depends.

20 Q. How did you learn that Mr. Rechnitz and Mr. Reichberg
21 worked for the same business?

22 A. When they came in together when Mr. Reichberg came in for
23 his license they said they were in the same business.

24 Q. Were you assigned to handle Mr. Rechnitz's application at
25 some point?

IBGTGRA2

Ochetal - Direct

1 A. Yes.

2 Q. To your understanding, why were you assigned that folder?

3 A. I just understood that there was a relation between him and
4 Jeremiah Reichberg, so my understanding was to treat it the
5 same way and act on it when told to act on it.

6 Q. Did you ever come to be told to act on Mr. Rechnitz's
7 application?

8 A. No.

9 Q. So did you approve it?

10 A. No.

11 Q. Now by 2015 was handling new applications part of your job?

12 A. No.

13 Q. Why not?

14 A. At that point I was assigned to the incidents section.

15 Q. And you had a different role than handling new applications
16 typically?

17 A. I was supposed to, yes.

18 MS. RAVENER: One moment, your Honor.

19 THE COURT: That's fine. Please take your time.

20 (Pause)

21 BY MS. RAVENER:

22 Q. Mr. Ochetal, you testified that you personally pled guilty
23 to certain crimes, is that right?

24 A. Yes.

25 Q. Have you been sentenced yet?

IBGTGRA2

Ochetal - Direct

1 A. No.

2 Q. What is your understanding of the maximum sentence you
3 could face, sir?

4 A. Up to 15 years imprisonment.

5 Q. After you surrendered yourself but before your guilty plea
6 did you begin to cooperate with the government?

7 A. I did.

8 Q. As part of your cooperation have you provided information
9 regarding your conduct and conduct of others?

10 A. Yes.

11 Q. And as part of your guilty plea did you enter into a
12 cooperation agreement with the government?

13 A. Yes.

14 Q. Let me show you what has been marked for identification as
15 Government Exhibit 3515-02. And you should have this in front
16 of you in your binder as well, Mr. Ochetal, if you would like
17 to refer to it there.

18 Do you recognize Government Exhibit 3515-02?

19 A. I don't even know where it is.

20 Q. Hold on one moment while we try to pull it up on the screen
21 for you.

22 Mr. Ochetal, it's also now on your screen, if that
23 will help you.

24 A. Yes.

25 Q. Do you recognize this?

IBGTGRA2

Ochetal - Direct

1 A. Yes.

2 Q. What is it?

3 A. It's an agreement between me and the United States
4 government.

5 Q. Is it your cooperation agreement?

6 A. Yes.

7 MS. RAVENER: Your Honor, the government would offer
8 3515-02 into evidence.

9 THE COURT: Thank you. Counsel?

10 MS. NECHELES: No objection, your Honor.

11 MR. MERINGOLO: No objection.

12 THE COURT: Thank you. I'm accepting 3515-02 into
13 evidence.

14 (Government's Exhibit 3515-02 received in evidence)

15 THE COURT: You can proceed.

16 BY MS. RAVENER:

17 Q. Mr. Ochetal, is this your entire agreement with the
18 government?

19 A. Yes.

20 Q. What is your understanding of your obligations under the
21 agreement?

22 A. My understanding is that I was to provide truthful
23 information about criminal conduct and such by myself and that
24 of others. My understanding was also to testify on behalf in
25 regards to this information when required to, and to not commit

IBGTGRA2

Ochetal - Direct

1 any other crimes.

2 Q. What is your understanding of what the government will do
3 if you comply with the agreement?

4 A. My understanding is that they would supply a letter to the
5 Court known as a 5K letter. My understanding of the letter is
6 that it is, in my estimation, a report card on my conduct,
7 negative and positive, prior and existing, and reflects any
8 bad, any good or whatever, that I have done.

9 Q. Would it include the crimes you committed, an explanation
10 of the crimes you committed?

11 A. Yes.

12 Q. And will it also include steps you have taken since then?

13 A. Yes.

14 Q. And what's the purpose of the letter, to your
15 understanding?

16 A. The purpose of the letter -- I just understood it to be,
17 like I said, like a report card, reflection upon my conduct on
18 both ends of the spectrum, and to be submitted to the Court at
19 the appropriate time.

20 Q. Will the government make any recommendation about what
21 specific sentence you will receive?

22 A. No.

23 Q. Who determines what your sentence will be?

24 A. The judge will.

25 Q. If the government sends the letter, what is the maximum

IBGTGRA2

Ochetal - Direct

1 sentence you will face?

2 A. 15 years in jail.

3 Q. What do you hope to receive by cooperating with the
4 government?

5 A. Just hope to receive as much leniency as possible.

6 Q. Has anyone from the government or anyone else made any
7 promise to you about what your sentence will be?

8 A. No.

9 Q. If you violate the terms of your cooperation agreement,
10 what is your understand of whether the government will still
11 write the letter to the judge?

12 A. They won't.

13 Q. Mr. Ochetal, if you violate the terms of your cooperation
14 agreement, what is your understanding of whether you get to
15 take back your guilty plea?

16 A. I can't.

17 Q. If you lie during your testimony today, what is your
18 understanding of what can happen as a result?

19 A. I believe I could be further charged with lying in court.

20 Q. In total, during your time at the NYPD gun license
21 division, approximately how many full carry licenses did you
22 approve for first-time applicants?

23 A. What period are you talking about?

24 Q. The entire time, Mr. Ochetal, approximately how many times
25 did you approve full carry licenses for first-time applicants

IBGTGRA2

Ochetal - Direct

1 who had no other license at all?

2 A. Offhand I could definitely remember one. There might have
3 been another here or there, but very few and far between. I
4 can only recall really one.

5 Q. Is that each when you were taking bribes?

6 A. As far as I remember, yes.

7 Q. So when you were taking bribes, what would you do instead?

8 A. Instead the process was to issue limited carries at first
9 and then upgrade them. "Limited carry" meant that they had
10 access to carry a firearm, I don't know, Monday, Tuesday and
11 Wednesday, other than that they couldn't. Then they would get
12 upgraded to more days, more times, and eventually get upgraded
13 to a full carry. So they wouldn't get the full carry off the
14 bat, but yes, they would eventually get it.

15 Q. And that's something that you would do in exchange for
16 bribes, give limited carry and then upgrade it later, is that
17 right?

18 A. Yes, that was part of the process.

19 Q. About how many times did you approve a full carry gun
20 license that you viewed as entirely legitimate?

21 MS. NECHELES: Objection.

22 MR. MERINGOLO: Objection.

23 THE COURT: Thank you, you can answer the question.

24 Q. Did you hear the question, Mr. Ochetal?

25 A. Yeah. As far as I remember, definitely one time.

IBGTGRA2

Ochetal - Direct

1 Q. Was it Jeremy Reichberg's or someone else's?

2 A. It was somebody else's, I don't remember his name.

3 Q. And approximately how many full carry gun license
4 applications did you personally handle that took roughly two
5 months from start to finish?

6 A. You said full carry licenses?

7 Q. Yes. For first time applicants --

8 A. Uh-huh.

9 Q. -- that you personally handled.

10 MR. MERINGOLO: Objection, compound.

11 THE COURT: Thank you, you can answer the question.

12 A. First-time applicants personally handled the process was
13 about six months to more than that, it could be a year, but I
14 would always say on the safe part at least six months.

15 MS. RAVENER: One moment, your Honor.

16 THE COURT: That's fine. Take your time.

17 (Pause)

18 Q. Mr. Ochetal, do you know where Jeremy Reichberg's gun
19 license application file or folder is today?

20 MR. MERINGOLO: Objection, leading.

21 THE COURT: Thank you, you can answer the question.

22 A. No.

23 Q. When did you last see it?

24 A. I'd say several months before Mr. Reichberg became an
25 incident.

IBGTGRA2

Ochetal - Direct

1 Q. Where was the file located the last time you saw it?

2 A. The last time I saw it was in a black file cabinet in the
3 incident section.

4 MS. RAVENER: One moment, your Honor.

5 (Pause)

6 THE COURT: Do you mind if I ask one question?

7 Mr. Ochetal, what do you mean by "became an incident?"

8 THE WITNESS: An incident -- I don't know if I brought
9 it up earlier, but an incident means someone who got in some
10 kind of trouble. They have a license already, they either got
11 arrested, charged with domestic violence, violated an order of
12 protection; so basically had a license, they're in trouble, we
13 tell them hey, you need to surrender your license, voucher your
14 firearm, we need to investigate you to see if you're still
15 qualified to have that license.

16 THE COURT: Thank you. I understand.

17 MS. RAVENER: No further questions from the government
18 at this time, your Honor.

19 THE COURT: Thank you very much.

20 Counsel?

21 MS. NECHELES: Could we take our morning break?

22 THE COURT: I would like to see if we could keep going
23 until around lunchtime, unless you would like to take a short
24 break.

25 MS. NECHELES: Yes.

IBGTGRA2

Ochetal - Direct

1 THE COURT: Ladies and gentlemen, let's take a short
2 break. Please during this break, as always, don't discuss the
3 case amongst yourselves, don't discuss it with anyone else and
4 do no research about the case.

5 I will see you back here shortly. Thank you.

6 (Jury not present)

7 THE COURT: So we'll take a very short recess just
8 enough time to let everybody stretch their legs.

9 Mr. Ochetal, during this brief recess I would like to
10 ask you not to talk about this case or your testimony with
11 anyone, particularly counsel and representatives for the United
12 States. Please be back in about five minutes.

13 Counsel, I hope to begin no later than ten minutes
14 from now. So hopefully we'll be back and ready to proceed.
15 We'll get as much work done as we can and we'll take our lunch
16 break later than usually scheduled in order to accommodate this
17 break.

18 Anything that anyone wants to raise before I step
19 down?

20 Seeing none, I will see you shortly.

21 (Recess taken)

22 (Continued on next page)

23

24

25

IBGKGRA3

Ochetal - Cross

1 THE COURT: Thank you. You can be seated.

2 Mr. Daniels, can you bring in the jury.

3 Counsel for the United States, can you please bring in
4 Mr. Ochetal?

5 MS. RAVENER: Yes, your Honor.

6 (Jury present)

7 THE COURT: Thank you. Ladies and gentlemen, you can
8 be seated.

9 Ms. Necheles, you can proceed.

10 MS. NECHELES: Thank you, your Honor.

11 CROSS-EXAMINATION

12 BY MS. NECHELES:

13 Q. Good morning, sir.

14 A. Good morning.

15 Q. The bribe scheme that you have been testifying about, where
16 you were receiving bribes from people, there were a number of
17 people involved in that bribe scheme, right?

18 A. Yes.

19 Q. You talked about a Mr. Endall. He was involved, he was
20 getting bribes?

21 A. I don't know specifically of bribes he was getting.

22 Q. Okay. But you believed at the time, that he was getting
23 bribes, right?

24 A. I might have assumed it, but I have no knowledge of it.

25 Q. I'm asking about your belief. You believed that at the

IBGKGRA3

Ochetal - Cross

1 time that you were working at the police department, that he
2 was getting bribes, right?

3 A. It would be a possibility.

4 Q. Do you recall telling that to the government, that you
5 believed he was getting bribes?

6 A. I believe I might have mentioned that something must have
7 been up.

8 Q. You also believed that Mr. Dean was getting bribes, right?

9 A. Yes.

10 Q. You knew that Mr. Villanueva was getting bribes, right?

11 A. Yes.

12 Q. And those were all people in the licensing division, right?

13 A. Yes.

14 Q. Out of all those people, you were the low man on the totem
15 pole, right?

16 A. Based on rank, yes.

17 Q. In fact, you were the person who was, as I understand it,
18 in charge of filling out paperwork, right?

19 A. Amongst many things, sure.

20 Q. And you would be, on many of these bribe -- these files
21 involving expeditors who were paying bribes, you would be the
22 one who would be filling -- doing -- you were the inspector on
23 them, right?

24 A. Yes.

25 Q. And you were the one who would create paperwork, right?

IBGKGRA3

Ochetal - Cross

1 A. Sorry. "Create"?

2 Q. Yes. Would you create documents for the file sometimes?

3 A. I would be given documents and print out reports.

4 Q. You say you started taking bribes in 2014, right?

5 A. Sounds about right, yes.

6 Q. When did you start working in the licensing division?

7 A. 2009.

8 Q. So for the first five years, you were not taking any
9 bribes, right?

10 A. No.

11 Q. No, you were not taking bribes?

12 A. No.

13 Q. What does "No" mean?

14 A. I was not taking bribes.

15 Q. Okay. But from the beginning, you were doing things
16 improperly in the licensing division, right?

17 A. No, not from the beginning.

18 Q. Well, isn't it true that from the beginning, early on, that
19 Paul Dean had you doing things for friends of his?

20 A. Not early on.

21 Q. Do you recall telling the government that from the
22 beginning, that Dean would have you move people to the top of
23 the pile who were his friends?

24 A. Yes, at some point, he did.

25 Q. Do you recall telling the government that that happened

IBGKGRA3

Ochetal - Cross

1 from the beginning when you were working there?

2 A. No, not at the very beginning.

3 Q. Okay. Directing your attention --

4 MS. NECHELES: If we could just show him 3515-10.

5 Your Honor, if I could show something to the witness?

6 THE COURT: Thank you. Please proceed.

7 BY MS. NECHELES:

8 Q. Do you recall telling the government -- see if this
9 refreshes your recollection. I'm going to direct your
10 attention to the bottom paragraph on this.

11 Do you recall telling the government that when you
12 first got to the permit unit, you started with Lieutenant Paul
13 Dean, and he asked you to process things for friends of his and
14 move the application to the top of the pile?

15 A. Yeah. I'm not saying he didn't do that, no.

16 Q. You said that this was just an example of what would go on,
17 right?

18 A. Yes.

19 Q. And, in fact, there were favors being done for police
20 officers, other police officers, right?

21 A. Sure.

22 Q. So even before you got involved in the bribery, there were
23 always favors being done for other police officers who wanted
24 to get a license or some sort of assistance from the licensing
25 department for friends or relatives, right?

IBGKGRA3

Ochetal - Cross

1 A. I would say that was -- at one point, that was common
2 practice, yes.

3 Q. In fact, it was often that high-ranking police officers
4 frequently asked for licenses for their friends, right?

5 A. Yes.

6 Q. And it was a regular thing that you would do, to help
7 high-ranking officers get licenses for friends or relatives,
8 right?

9 A. I was usually the go-to guy on a lot of that stuff, yes.

10 Q. So you did it regularly, right?

11 A. Whenever I was told to. There was definitely several --
12 several occasions of it, yes.

13 Q. You recall telling the government that that was a regular
14 thing that you would do?

15 A. I don't necessarily recall saying that, but it was common
16 practice that higher-ranking members came down and had a
17 friend, we would help them out.

18 Q. Are you saying -- but, sir, I want to know whether that was
19 a regular thing that you were doing?

20 A. It was part of what I was doing. I was supposed to do a
21 lot of other things. It was definitely part of what I was
22 doing.

23 Q. I want to direct your attention, if I could, to 3515-23,
24 page 4.

25 Directing your attention to the top line, does that

IBGKGRA3

Ochetal - Cross

1 refresh your recollection that you told the government that it
2 was a regular thing that you would do, to help high-ranking
3 police officers?

4 A. If it's there --

5 THE COURT: I'm sorry, just to be clear, she's not
6 asking you to read anything on the document. The question is
7 if it refreshes your recollection about the issue.

8 THE WITNESS: Oh. Like I said, it's just, to me, a
9 matter of words. There was a lot of things I regularly was
10 supposed to do. So that might not necessarily be something I
11 was supposed to do, but I did it, and I did it often.

12 BY MS. NECHELES:

13 Q. In fact, you told the government just last week that you
14 processed things for high-ranking officers all of the time,
15 right?

16 A. As long as they would request it, yes.

17 Q. Okay. So it was all of the time that you were doing that,
18 right?

19 A. Whenever they would ask.

20 MS. RAVENER: Objection; asked and answered.

21 THE COURT: Thank you.

22 I accept the answer.

23 Q. And that went from -- back from the beginning of when you
24 were working in the licensing department, right?

25 A. Not from the very beginning. Early on, maybe, but I

IBGKGRA3

Ochetal - Cross

1 believe it took some time for people to trust that I would do
2 what they would say without giving them backlash. So if I got
3 there in early 2009, they weren't right away saying, oh, do
4 this, and do that -- they didn't know me from anything -- so it
5 did take some time. It wasn't as soon as I walked in, I was
6 doing these things.

7 Q. Okay. But from very early on, right?

8 A. Early on.

9 Q. In the whole time -- so, then, starting in 2014, you
10 started taking bribes, right?

11 A. Around 2014. I mean, I presume it would be the end of
12 2014, but that would be the year.

13 Q. Okay. Out of the whole time that you were involved in this
14 bribe scheme and all of what you did, you got very little money
15 out of this, didn't you?

16 A. As far as money?

17 Q. Yes.

18 A. I guess.

19 Q. Well, didn't you tell the government you got less than
20 \$1,000 out of all of this?

21 A. I believe that was less than a thousand from Shaya.

22 Q. Okay.

23 A. And then there was at least 500 from Valastro, and then a
24 couple of hundred from Soohoo.

25 Q. Okay. And for Shaya Lichtenstein, you did over a

IBGKGRA3

Ochetal - Cross

1 hundred -- you processed over a hundred applications, right?

2 A. Correct.

3 Q. You filled out paperwork on there, right?

4 A. What do you mean, "fill out paperwork"?

5 Q. Well, you would do something that was called fattening the
6 files, right?

7 A. Yes.

8 Q. You would call and try to get files -- paperwork sent in,
9 right?

10 A. Yes.

11 Q. And sometimes you would create paperwork if it wasn't in
12 the file, right?

13 A. I don't know if I would create, but I would get stuff in
14 there that might not necessarily be exactly what should be in
15 there. Maybe it's not as relevant to the applicant, but it was
16 what we termed fattening the file.

17 Q. There was so much work that you were doing on
18 Lichtenstein's stuff, you sometimes had to take it home,
19 correct?

20 A. Yes.

21 Q. You would work on creating documents at home, right?

22 A. At home, basically, what I did was organize the folders.
23 So what would happen is we'd get a bunch of paperwork, and the
24 folders needed to be put in a specific order, put in a binder,
25 hole-punched to make it look proper. So I had -- I'm not

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Ochetal - Cross

1 saying I had all the paperwork all the time, but what I did
2 have was out of order, shoved in there, not acceptable to go to
3 the file. So I wasn't creating it, it had everything already.
4 What I was doing was putting it together.

5 Q. Okay. And, sir, on those Lichtenstein files that you took
6 home and worked on, those -- you never were paid directly by
7 Mr. Lichtenstein, right?

8 A. No.

9 Q. You got money, sometimes David Villanueva would give you
10 money on that, right?

11 A. Yes.

12 Q. And it was a tremendous amount of work you did, right?

13 A. I think so.

14 Q. I mean, it wasn't only full time at your job, it was time
15 at home as well, right?

16 A. Sure.

17 Q. And you were doing that for five years?

18 A. No.

19 Q. From 2009 -- I'm sorry, from 2014 to 2016, right?

20 A. As far as doing the work with the files at home?

21 Q. Or doing the work on Lichtenstein.

22 A. Oh, work on Lichtenstein overall? 2014 into 2015.

23 Q. Okay. Those were being -- you were doing it because David
24 Villanueva asked you to do, right?

25 A. Yes.

IBGKGRA3

Ochetal - Cross

1 Q. And you thought that David Villanueva was your friend,
2 right?

3 A. I believed him to be my friend, yes.

4 Q. And, in fact, you went away on trips with him, right?

5 A. Yes.

6 Q. You thought -- with your wives, both your wives, right?

7 A. Yes.

8 Q. And you used to socialize together?

9 A. Yes.

10 Q. So you did this mainly because he asked you to, right?

11 A. He asked me to. I was getting something out of it, not
12 just in compensation through Shaya, but the friendship with
13 Dave would, you know, help me out on days off. Maybe I want to
14 take, you know, a weekend off. You know, he was -- it came to
15 a point where he was my immediate supervisor, so the more I
16 helped him, that was beneficial to me just as much as getting a
17 bottle of booze from Shaya.

18 Q. So you were getting very little money, maybe a bottle of
19 alcohol, but you were getting friendship from David Villanueva
20 and some help at work, right?

21 A. Yes.

22 Q. And then at some point, Shaya became persona non grata in
23 the office, right?

24 A. That's correct.

25 Q. How did that happen?

IBGKGRA3

Ochetal - Cross

1 A. It happened on -- one day there was an email sent to
2 Inspector Endall, and perhaps others -- I know Dave got wind of
3 the email or received the email -- and it just had specified
4 how much he was charging for pistol license applications, and
5 it raised a big red flag within the license division, and,
6 obviously, in my mind -- I'm sure, I don't know, but in Dave's
7 mind -- because he knew we were helping him.

8 Q. After that, Shaya Lichtenstein was no longer allowed into
9 the licensing division, right?

10 A. Right.

11 Q. When that happened, Shaya stopped being friendly with you,
12 right?

13 A. With?

14 Q. I'm sorry, withdrawn.

15 Dave Villanueva stopped being friendly with you,
16 right?

17 A. I wouldn't say Dave stopped being friendly with me. He
18 just, perhaps, was a little more distant than normal. It's not
19 like he stopped calling me or anything.

20 Q. Well, once you stopped working on the Shaya stuff, you were
21 moved from the process -- the part of the licensing division
22 from processing to cancellations, right?

23 A. Yes. I was moved from the incidents section to the
24 renewals section.

25 Q. And that's because most of what you had been doing was

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Ochetal - Cross

1 Shaya's stuff, right, Shaya Lichtenstein stuff?

2 A. Shaya Lichtenstein stuff. I guess it wasn't known at the
3 time about Frank Soohoo's stuff. So the assumption was, based
4 on the email, it was Shaya's stuff.

5 Q. When you say it wasn't known, that means -- that's not why
6 you were transferred, is it?

7 A. No.

8 Q. It had nothing to do with Frank Soohoo's stuff, right?

9 A. No.

10 Q. It was because you had mainly been working on Shaya
11 Lichtenstein's stuff, right?

12 A. Not mainly. I did a lot of work on Frank Soohoo's stuff.
13 I just believed it wasn't known by anybody.

14 Q. You mean none of your supervisors -- David Villanueva
15 didn't know about the Frank Soohoo stuff?

16 A. Oh, Dave and I were in on that stuff, but nobody else
17 really knew to what extent me and Dave were involved.

18 Q. Who knew you were doing all that work on Lichtenstein?

19 A. Who knew?

20 Q. Yes.

21 A. Obviously, Sergeant Villanueva knew. I assumed that
22 Lieutenant Paul Dean knew, and that Inspector Endall knew.

23 Q. And you think that it was that email that caused you to be
24 moved?

25 A. I would say I know it was that email that caused me to be

IBGKGRA3

Ochetal - Cross

1 moved.

2 Q. You knew that it was the email that caused you to be moved?

3 A. I would say for the most part, that was the gist of why I
4 was moved, yes.

5 Q. Then after that, you stopped doing so much with David
6 Villanueva, right?

7 A. Yes.

8 Q. He stopped socializing with you?

9 A. Yes.

10 Q. When he no longer had use of you?

11 A. I never really thought of it that way, but, yeah, there
12 were times where I thought that, you know, he didn't need me as
13 much, so maybe he didn't call me as much. But I tried not to
14 think about it that way.

15 Q. And you also did some work during this time period, you
16 also worked on files that were for a person named John
17 Chambers, right, for clients of his?

18 A. At times, yes.

19 Q. And you would be asked to do that by Mr. Endall; is that
20 right?

21 A. Several times.

22 Q. Am I correct that you helped a person who had been arrested
23 for sexual assault get a gun license even though he shouldn't
24 have?

25 A. I do not remember the specific example.

IBGKGRA3

Ochetal - Cross

1 Q. Do you recall telling that to the government?

2 A. I might have. I just don't know the specific example.

3 Q. You also recall that you helped get -- process a file for
4 an Eli Rowe, who was a client of Chambers?

5 A. Say the name again?

6 MS. RAVENER: Objection.

7 Q. Eli Rowe?

8 MS. RAVENER: Compound.

9 THE COURT: Thank you.

10 Can you ask the question again, please, counsel?

11 MS. NECHELES: Sure.

12 BY MS. NECHELES:

13 Q. Do you recall processing a file for Eli Rowe as well, a gun
14 file?

15 A. I don't recall that name.

16 Q. Did you tell the government that you had done that?

17 A. I don't remember that name.

18 Q. Do you remember looking through that file and saying that
19 it didn't have the right paperwork?

20 A. I still don't remember the name.

21 Q. But you did a couple of the files for Mr. -- that had
22 involved Chambers, Mr. Chambers, right, that he was the --

23 A. Sure.

24 Q. -- expeditor on, right?

25 A. Yes.

IBGKGRA3

Ochetal - Cross

1 Q. Do you recall Chambers was an expeditor who was also a
2 lawyer, right?

3 A. I did understand that.

4 Q. You also did work and did some stuff helping a
5 Mr. Valastro, right?

6 A. I did.

7 Q. And there was not -- it was helping him get a permit to buy
8 guns, or is that what it was called, a pink slip?

9 A. Pink slips or purchase authorization forms.

10 Q. That he would use in his business for people who came to
11 buy --

12 A. Firearms, yeah.

13 Q. Right. That didn't involve much workpaper work, did it?

14 A. Not major paperwork, no.

15 Q. You would just bring things over to him?

16 A. Pretty much.

17 Q. And he gave you discounted guns for that?

18 A. Yes. And cash.

19 Q. And about \$500 in cash --

20 A. Yes.

21 Q. -- during that time period?

22 And some alcohol, right?

23 A. Yes, ma'am.

24 Q. And those were all specific quid pro quos, right? You
25 would get something in return for having given these things,

IBGKGRA3

Ochetal - Cross

1 right?

2 MS. RAVENER: Objection; legal conclusion.

3 THE COURT: Thank you.

4 Counsel, can you please rephrase?

5 MS. NECHELES: Okay.

6 BY MS. NECHELES:

7 Q. Well, all those things that you testified now that you got
8 with respect to Lichtenstein, to Chambers, and to Mr. Valastro,
9 you understood, at the time that you were getting the money and
10 the alcohol, that that was being done in exchange for you
11 helping them in these areas, right?

12 A. Yes.

13 Q. I just want to direct your attention for a minute to
14 Government Exhibit -- to 3515-24 and see whether it refreshes
15 your recollection about Eli Rowe's application.

16 MS. NECHELES: If we can show that to him on the
17 screen, your Honor?

18 THE COURT: You may.

19 Q. And directing your attention to the bottom, do you recall
20 discussing a special carry permit for Eli Rowe, who had a
21 license from Sullivan County, and that there was not the
22 paperwork in the file that would support that?

23 A. Well, I still don't remember the name. However, if I did
24 look at a file for anybody, I would be able to determine if it,
25 in fact, had proper paperwork for the specific license. So

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1 outside of the name, I could have opened a file, and examined
2 it, and saw whether or not there was sufficient paperwork. I
3 just don't recall the actual name of the folder, but I do
4 recall looking at folders and seeing if there were
5 documentations missing or not. I just don't know this person's
6 name.

7 Q. You don't recall the name.

8 Do you recall looking at one --

9 A. I've looked at -- I know I've looked through files to see
10 that there was proper documentation.

11 Q. Do you recall looking at one for Sullivan County, in a
12 special carry?

13 A. I don't remember. Honestly, the name does not ring a bell
14 to me.

15 Q. Okay. It was easier to get a gun license, a pistol
16 license, in Sullivan County than in New York City, right?

17 A. Sure. Yes.

18 Q. So that was what -- sometimes people would do that, and
19 then look to get a special carry in New York?

20 A. That would happen.

21 Q. And that was an easier way to go through the process,
22 right?

23 A. Easier. You just had to prove that you had a business
24 within the five boroughs, though. So if you didn't have
25 business within the five boroughs, then, technically, you

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Ochetal - Cross

1 wouldn't qualify.

2 Q. Okay. But not just business, a business that required you
3 to have protection, right?

4 A. Sure, yeah.

5 Q. And that means a business that either involved a lot of
6 cash, right?

7 A. Right.

8 Q. Or a business that involved carrying valuable jewelry?

9 A. Sure. Anything of value, yes.

10 Q. Okay. But something that was dangerous and required a
11 pistol license, right?

12 A. Right.

13 Q. Like being a lawyer doesn't qualify you for a pistol
14 license?

15 A. Not being a lawyer, unless you did some type of threat
16 assessment letter. There was ways about trying to obtain it,
17 but it wasn't -- it wasn't so simple.

18 Q. All the work that you did, the money that you got, you
19 said, from Lichtenstein was for -- you understood that it was
20 for processing -- you understood, at the time you got that
21 money, that it was for processing applications, right?

22 A. Right.

23 Q. And you did a ton of work for Mr. Lichtenstein, right?

24 A. Yes.

25 Q. And the money that you got from Mr. Valastro and the other

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Ochetal - Cross

1 things, you understood it was for you getting those pink slips
2 for Mr. Valastro that helped him in his business, right?

3 A. Yes.

4 Q. And that was also true, am I correct, for what you got --
5 Chambers, you never got anything, right?

6 A. Nothing that I can recall from Chambers.

7 Q. So now I want to talk about Mr. Soohoo. Mr. Soohoo took
8 you on a lot of trips, right?

9 A. Yes.

10 Q. And he also got you meals, right?

11 A. Yes.

12 Q. And he paid for three trips for you; is that correct?

13 A. Yes.

14 Q. And for you and your wife, right?

15 A. Yes.

16 Q. And you went with David Villanueva, too, right?

17 A. Yes.

18 Q. Now, am I correct that at the time that you were taking
19 these trips, that you did not believe that they were a bribe?

20 A. Well, the first trip that we took, which was to the
21 Bahamas, at the time, I didn't think that much of it. It was
22 kind of a little early on in whatever relationship I had with
23 Frank Soohoo.

24 Q. Am I correct, Mr. Soohoo was a --

25 MS. RAVENER: Objection, your Honor. Allow the

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1 witness to finish.

2 MS. NECHELES: Your Honor, I thought he did.

3 THE COURT: Thank you.

4 I thought so as well, but, counsel, please go ahead
5 and inquire.

6 I'm sorry. Mr. Ochetal, is there anything else that
7 you wanted to say?

8 THE WITNESS: I was just elaborating on the first
9 trip. It did seem -- it didn't appear to me that there was
10 necessarily a bribe at that time, so I didn't think nothing of
11 it on that trip until I got back from that trip.

12 BY MS. NECHELES:

13 Q. Okay. Just to be clear, Mr. Soohoo was what you've called
14 a police buff, right?

15 A. Yes.

16 Q. And some people love hanging out with police officers,
17 right?

18 MS. RAVENER: Objection.

19 THE COURT: Thank you.

20 You can answer the question, if you know the answer.

21 THE WITNESS: Yes.

22 Q. In the police department, there are people known as police
23 buffs who want to hang out with police officers, right?

24 A. Yes.

25 Q. In fact, the police academy allows civilians to take a

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Ochetal - Cross

1 course with the police, right?

2 MS. RAVENER: Objection; foundation.

3 Q. Well, do you know that?

4 THE COURT: Thank you.

5 You can answer the question.

6 THE WITNESS: I'm not sure of that.

7 BY MS. NECHELES:

8 Q. Well, didn't you tell the government that Mr. Soohoo had
9 gone to the police academy?

10 A. I just knew Frank Soohoo was a police auxiliary officer. I
11 don't know if they go through an academy or not. I don't know
12 how that works.

13 Q. Okay. So that's -- you told the government he was someone
14 who had gone through an auxiliary training, right?

15 MS. RAVENER: Objection; foundation.

16 THE COURT: Thank you.

17 You can answer the question, if you have an answer.

18 THE WITNESS: I just remember him being an auxiliary
19 police officer. I'm not sure what the training is, though.

20 Q. What does that mean, to be an auxiliary police officer?

21 A. To be a volunteer police officer, help out in the
22 community. They're unarmed, as far as I recall, and they
23 volunteer, I don't know, once a month to do community-type
24 work. Kind of the gist of what I know about them.

25 Q. That's a -- an auxiliary police officer, that's something

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1 that the police department works with those people and gives
2 them a sort of quasiofficial status, right?

3 MS. RAVENER: Objection.

4 THE COURT: Thank you.

5 MS. RAVENER: Scope, foundation.

6 THE COURT: Thank you.

7 If you know the answer to the question, you can
8 answer.

9 THE WITNESS: I am not sure of their, like, official
10 status. I don't know, like, can they make arrests or not. I
11 don't know what they can do.

12 THE COURT: Thank you.

13 BY MS. NECHELES:

14 Q. Okay. Isn't it true that you have told the government that
15 when you first went on these trips with him, or at the time
16 that you took these trips, that you were naive? Am I correct?

17 A. Yeah, I'd say I'd say early on, I was naive for sure.

18 Q. And by that, what you mean is, you didn't see these as a
19 bribe, right?

20 A. Not early on.

21 Q. And it was only once you started trying to cooperate with
22 the government, that you started believing that these had been
23 bribes, right?

24 A. I believed towards the end -- by the end, I mean our last
25 trip with Frank Soohoo -- that I realized the conundrum I was

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1 in was that we would go on a trip, come back, and that day,
2 he's telling me he's got three guys coming in on Tuesday, four
3 guys coming in on Friday. So towards the end, I started to
4 feel like, well, you're only taking me on these trips because
5 as soon as we get back, you want me to work.

6 So, yes, in the beginning, I was naive, I thought,
7 hey, this is great, but at the end, knowing that if I have to
8 do all this extra work and keep up with my own work, well, you
9 know, the only reason I was going on these vacations was
10 because when I came back, he had worked lined up for me.

11 Q. So that didn't start at the beginning, right?

12 A. At the beginning? No.

13 Q. And, in fact, Mr. Soohoo had gotten his own gun license and
14 didn't have any special favors or anything like that, right?

15 A. No. He had gotten his own gun license a while before the
16 consultation/bribery thing happened.

17 Q. Okay. So he didn't do -- there was nothing improper about
18 his license, right?

19 A. Nothing I can really recall specifically.

20 Q. How did you become friends with him at first?

21 A. I just was introduced to him by Sergeant Villanueva.

22 Q. When you started doing it, it wasn't for a while until he
23 started asking for favors with helping other people get gun
24 licenses, right?

25 A. Well, it didn't seem that way, but I remember the first

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1 time he told me, hey, I have a cousin coming in, can you help
2 him out. I helped him out, that was that. You know, then
3 after that, it was maybe another friend of a cousin. So
4 eventually it got to the point where -- I mean, I might not be
5 the sharpest tool in the shed, you know, but you kind of figure
6 out how many cousins can you have, you know. I guess he kind
7 of knew that, we all knew that, and just came to an
8 understanding that he started bringing people in for this
9 purpose.

10 Q. When he first asked you -- when he said he had a cousin or
11 asked you to take care of someone's application, there was
12 nothing improper about the application, right?

13 MS. RAVENER: Objection.

14 THE COURT: Thank you.

15 Counsel, can you rephrase the question?

16 MS. NECHELES: Okay.

17 BY MS. NECHELES:

18 Q. Sir, am I correct that when he first asked you to take care
19 of an application or help someone get a license, he wasn't
20 asking you to do something other than to expedite it, right?

21 MS. RAVENER: Objection.

22 THE COURT: Thank you.

23 You can answer the question.

24 THE WITNESS: Other than expedite? I'm not sure. I
25 remember doing anything else with that case.

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1 Q. And it was later that there was -- it was much later that
2 there was some incidents where he asked you to help people who
3 shouldn't get licenses get licenses, right?

4 A. Yes.

5 Q. On those cases, he offered you money, right?

6 A. Yes.

7 Q. In fact, he offered to split \$15,000 between you and
8 Mr. Villanueva at one point?

9 A. I'm not a hundred percent recalling the amount, but that
10 sounds about right. It was supposed to be between -- I believe
11 Lieutenant Dean would have been involved in this partaking as
12 well, if I remember.

13 Q. You didn't take any money on that?

14 A. No.

15 Q. You didn't get anything on that?

16 A. No.

17 Q. But you did help him out, right?

18 A. No.

19 Q. Well, were you told by Mr. Villanueva to process that?

20 A. I was not there when this particular applicant came in to
21 get fingerprinted.

22 Q. So someone else took care of that totally?

23 A. I don't know about totally. I know somebody else did the
24 intake. All I ever know that happened with that was, at some
25 point, Sergeant Villanueva said that Lieutenant Dean was taking

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1 care of it. I really -- I didn't fingerprint the guy,
2 interview the guy, or anything like that.

3 Q. So it is false -- it is not true that you got any money or
4 any benefits from that, right?

5 A. From that specific --

6 Q. Yes.

7 A. -- client?

8 Q. Yes.

9 A. No.

10 Q. There were other ones, though, where you did get specific
11 benefits from him, right?

12 At some point you started connecting some of the
13 applications that you were being asked to do with things that
14 Mr. Soohoo was giving you, right?

15 A. Okay.

16 Q. Am I correct?

17 A. I'm not sure what you're asking.

18 Q. Well, isn't it true that it's only now, thinking back, that
19 you thought that Soohoo was more like a business partner than a
20 friend? Right?

21 A. Yeah, thinking back, he was more of a business partner,
22 yes.

23 Q. Okay. Didn't you tell the government that it's only now,
24 thinking back, that you have come to realize this?

25 A. I'm not sure exactly when I told them that, but I realized

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1 that myself some time ago.

2 Q. Well, am I correct that -- do you recall telling the
3 government just last week that it was only now, thinking back,
4 that you realized that Soohoo was more like a business partner
5 than a friend?

6 A. I mean, yeah, thinking back, but that doesn't -- it doesn't
7 change what it really was, because, you know, I answered phone
8 calls from Frank from my house on numerous occasions about
9 licensees. So I always understood it to be more than a
10 friendship.

11 Q. Okay. But didn't you tell the government that at the time,
12 you maybe convinced yourself that he was a friend, just a
13 friend?

14 A. Early on, I thought he would have been a friend, sure.

15 Q. Okay. And that you believed that the only reason that you
16 were hanging out and doing things with him was you were a
17 friend of his?

18 A. I wasn't hanging out with him because he was a friend, no.

19 Q. Well, didn't you tell the government just last week that
20 you only now realized that if Soohoo hadn't paid for trips, you
21 probably wouldn't have traveled with him?

22 A. No, I wouldn't have.

23 Q. But you told the government that you only now realized
24 that, right?

25 A. I said I realized it. I don't -- you know, I might not

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1 have meant just now, I woke up this morning and thought about
2 it, so --

3 Q. Okay. But when you discussed this with the government last
4 week, you were preparing for your testimony here, right?

5 A. Sure.

6 Q. And, sir, just to be clear, you have a cooperation
7 agreement with the government, right?

8 A. Yes.

9 Q. And you understand that you are going to jail on this case,
10 likely to go to jail, if you don't have that cooperation
11 agreement with the government, right?

12 A. Sure.

13 MS. RAVENER: Objection.

14 Q. And there are sentencing guidelines, right?

15 THE COURT: Thank you.

16 Thank you. I accept that.

17 MS. NECHELES: Beg your pardon?

18 THE COURT: I accepted the response.

19 BY MS. NECHELES:

20 Q. There are sentencing guidelines that govern what sentences
21 or that set forth recommended sentences, correct, in the
22 federal system?

23 A. Yes.

24 Q. Do you know what your sentencing guidelines are?

25 MS. RAVENER: Objection, your Honor.

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1 THE COURT: Thank you.

2 Sustained.

3 Q. Well, you understand that your sentencing guidelines would
4 mean there was a recommended sentence of years, right?

5 MS. RAVENER: Objection, your Honor.

6 THE COURT: Thank you.

7 Sustained.

8 MS. NECHELES: Your Honor, can we approach on this?

9 THE COURT: Please come on up.

10 (Continued on next page)

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1 (At the sidebar)

2 THE COURT: Sorry, I want to talk about scheduling,
3 too.

4 The government has elicited the potential exposure
5 here in terms of possible amount of time, years, based on the
6 maximum statutory penalty, so that's not a problem.

7 MS. NECHELES: But there are sentencing guidelines.

8 THE COURT: Thank you.

9 MS. NECHELES: If he knows what they are, then that's
10 what he's afraid of getting for a sentence. It's state of
11 mind. I've never heard of an objection to this, your Honor.
12 Never.

13 THE COURT: Thank you.

14 Counsel?

15 MS. RAVENER: Your Honor, this witness pled guilty to
16 the same crimes that are on trial here. This line of
17 cross-examination would go to inform the jury of the kind of
18 punishment that the defendants themselves could face. It's not
19 appropriate. It's not necessary.

20 THE COURT: Thank you.

21 MS. NECHELES: It's not the same crime.

22 THE COURT: What, counsel, do you get from this that
23 you don't get from identifying that he is exposed to a
24 potential range? I'm concerned about what the government has
25 said. I'm also a bit concerned, given where we are post

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1 Booker, in that those guidelines aren't mandatory.

2 MS. NECHELES: I tried to phrase it very carefully,
3 that they were recommended sentences, your Honor. They are
4 recommended sentences. People in his situation know --

5 THE COURT: Let me pause you briefly.

6 How much more time do you expect to have with this
7 witness?

8 MS. NECHELES: Probably another hour, your Honor.

9 THE COURT: Thank you.

10 Let's take a lunch break, then, and we can talk about
11 this outside of the presence of the jury.

12 MR. MERINGOLO: Not much. Fifteen, tops.

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1 (In open court)

2 THE COURT: Ladies and gentlemen, I'm going to take
3 our lunch break now. During this break, please don't discuss
4 the case amongst yourselves, don't communicate about it with
5 anyone else, and do no research about the case. I'll see you
6 back here shortly. It will be a little over 30 minutes. See
7 you soon.

8 (Continued on next page)

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1 (Jury not present)

2 THE COURT: Thank you. You can be seated.

3 Mr. Ochetal, during this recess, as before, let me
4 continue to ask you not to discuss your testimony with anyone,
5 including, in particular, the United States and its
6 representatives. You can step down. Please expect to begin
7 again around 12:30. I expect you will be called back to the
8 witness box then.

9 THE WITNESS: Okay.

10 THE COURT: Thank you.

11 So, counsel, as Mr. Ochetal is making his way out,
12 first, thank you for the work that you've done. We'll take our
13 lunch break after a short discussion of the issue that we're
14 taking up at sidebar.

15 Anything else that the parties would like to raise?

16 MS. LONERGAN: Your Honor, before we take up that
17 issue, a brief scheduling thing: Our next witness, who is
18 here, he's a civilian and took the day off from work to be
19 here. I'd like to send him home now, in light of Ms. Necheles'
20 representations that she has another hour of cross-examination.
21 If we have extra time to fill, we'll play calls, but I'd like
22 to send him home.

23 THE COURT: Thank you.

24 Ms. Necheles, is it correct that you expect that your
25 cross will last about an hour longer of Mr. Ochetal?

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1 MS. NECHELES: Your Honor, I think so, but I never
2 know. It could be half an hour, but I think it's more likely
3 to be closer to an hour.

4 THE COURT: Thank you.

5 Any objections to the government's proposal that we
6 fill in any necessary time today with the wire calls, so we can
7 permit the witness to leave for the day?

8 MS. NECHELES: I have no objection.

9 THE COURT: Thank you.

10 Counsel?

11 MR. MERINGOLO: No objection.

12 THE COURT: That's fine.

13 MS. LONERGAN: Thank you very much, your Honor. Our
14 representatives will let him know he is free to go.

15 THE COURT: Thank you.

16 Let's talk further about the guidelines issue,
17 counsel. Just to reframe it, the question that I posed was
18 what the guidelines information gives the jury beyond
19 information about his aggregate exposure. The government
20 argued that they were concerned that this guidelines range is
21 too suggestive of what the potential punishment is that the
22 defendants here might face.

23 Let's continue the conversation.

24 MS. NECHELES: Your Honor, I actually don't understand
25 that argument from the government. Right now, he said he's

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1 facing 15 years, I think, and if they think that this case is
2 the same, if they're arguing that the jury will think this case
3 is the same as that case, then the jury will think it's 15
4 years. The guideline range is less.

5 So I don't understand what the government's -- they
6 would think these people are facing maybe 15 years. The
7 guidelines range is going to be lower, so I really don't
8 understand the government's argument.

9 MS. RAVENER: Your Honor, if I may?

10 THE COURT: Please.

11 MS. RAVENER: The defense can cross Mr. Ochetal on the
12 maximum sentence, and they can cross him, as well, on what he
13 hopes to receive. I don't see any purpose to the numbers in
14 between, frankly, other than alerting the jury to what the
15 likely guidelines range sentence would be -- which they
16 described in their questions as a recommended guideline
17 sentence, to alert the jury to the kinds of punishments these
18 defendants may face if convicted. I don't think that's
19 appropriate. It doesn't seem necessary to the questions.

20 They can even question Mr. Ochetal if he hopes to
21 avoid prison altogether, but particularly in a post Booker
22 world, to elicit guidelines figures from this witness about the
23 very crimes on trial, I think, is particularly inappropriate.

24 THE COURT: Thank you.

25 MS. RAVENER: Your Honor, one moment?

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1 THE COURT: Please. Go ahead.

2 MS. NECHELES: While she's consulting, can I --

3 THE COURT: Just give them one moment, if you don't
4 mind, just to make sure that the government can digest whatever
5 it is that you all say.

6 (Pause)

7 MS. RAVENER: Your Honor, the other factor here is
8 that as the cooperation agreement, which is now in evidence,
9 makes clear, there is no guidelines range set forth in the
10 cooperation agreement. So any inquiry along these lines
11 necessarily invades attorney-client privilege. That
12 information would only come from Mr. Ochetal's conversations
13 with counsel.

14 THE COURT: Thank you.

15 What is the genesis of the information that this
16 witness might have about the guidelines range?

17 MS. NECHELES: Judge, I don't know, but I'm not going
18 to ask him that. Just because you knew something in part
19 because you learned it from your attorney doesn't make it
20 privileged. It's only when I ask about conversations, that
21 it's privileged.

22 THE COURT: Thank you.

23 Can I ask, counsel, what is the basis for the numbers
24 that you propose to suggest to him in your inquiry, given the
25 lack of the calculation and the --

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1 MS. NECHELES: It's actually pretty vague, your Honor.
2 I was going to say, you understood that the guidelines range
3 was several years, right, and that you could be going to jail
4 for a number of years on this. Here's what the problem is,
5 Judge: The question is what's in his mind, what does he think
6 he's facing. Everybody in the world knows, because of common
7 practice. What -- everybody sees articles, if you're a read --
8 a person who reads the newspapers, that say the maximum
9 sentence is 150 years. They know right now that there were two
10 different witnesses on the stand, one who was facing 50 years,
11 another 15 years, for essentially the same conduct.

12 THE COURT: Thank you.

13 Can I ask --

14 MS. NECHELES: It's what's in his mind.

15 THE COURT: Can you get to the same point without
16 invoking the concern that the government has suggested?

17 MS. NECHELES: Well, I don't know if I can do it.

18 THE COURT: You can ask, for example, you've testified
19 that you're exposed to up to 15 years of imprisonment, you
20 don't think you're necessarily going to get 15 years, right,
21 but you think that you could get up to several years in prison,
22 right, without referencing the guidelines?

23 MS. NECHELES: No. He has to really think. He has to
24 have a basis for thinking that. And he's afraid because right
25 now, he knows what the guidelines are. This is the real truth

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1 of what the world is. A person in his situation is afraid. He
2 knows what the potential guidelines are. He is aware of that
3 when he goes in to cooperate with the government, and when he
4 makes this deal, he's afraid. That's what he wants to avoid.
5 That's his main motivation here. So to suggest that I can't
6 ask this witness what he's really afraid of and why he's
7 cooperating with the government, it's taking reality out of
8 this. That's the truth. That's what he's afraid of.

9 And, Judge, it's not the same guidelines range. I'm
10 not going to argue ever to the jury that this is what these
11 people are facing because I know that will be improper, and you
12 would stop me.

13 THE COURT: Thank you.

14 Can I ask what the basis for any questions about this
15 witness' guidelines range would be, if it's several years, or a
16 year and a half, or anything? I'm somewhat concerned about
17 anchoring any suggestion about the number of years of exposure
18 he may face to a guidelines range, which you know is calculated
19 based on a number of facts that are not known to me or to you.

20 MS. NECHELES: I want to ask him what he thinks, what
21 he thinks it is. It's not relevant if I calculate it. I want
22 him to say what he thinks, like that he understands that it
23 would be several years. And then what do you think it is. I
24 just want him to say what is his state of mind. And I'm not
25 going to ask him about conversations with attorneys, and he

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1 might not be able to answer this. I might go nowhere with this
2 because I don't know what he's going to say, but I should be
3 able to inquire what is his state of mind, what is he afraid
4 of. Or he may give a totally inaccurate number. I don't know,
5 Judge, it might be too low. This is kind of a risky thing for
6 me to be asking, but I'm entitled to ask it, I believe.

7 MS. RAVENER: Your Honor, it's exactly those risks and
8 that kind of speculation, rank speculation, that has no place
9 here.

10 As practitioners before the Court, and as the Court's
11 own experience reflects, I'm certain, there's no way that a lay
12 witness has any specific knowledge of what guidelines range
13 would apply to their given case without consultations with a
14 lawyer, and specifically with this defendant's lawyer. This
15 necessarily, to the extent he even knows, would be privileged
16 information, and it's irrelevant here. Counsel can continue to
17 make the point by cross-examining about the fact that, yes, he
18 believes he faces prison time, that prison time could be
19 extensive, that prison time could be as much as 15 years, he
20 hopes to avoid it by cooperating. This gains nothing, and it
21 puts a deeply problematic set of argument and facts before the
22 jury that's not properly situated here, not properly known to
23 this witness through any source other than privilege.

24 THE COURT: Thank you.

25 MS. NECHELES: This is not speculation. I'm asking

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1 him not what his guidelines are, but what's in his mind, what
2 does he believe he is facing. So it's absolutely not
3 speculation. That's what I'm asking: What do you think you're
4 facing here?

5 He may say I don't know what the guidelines --

6 THE COURT: Thank you.

7 I'm sorry. Are you proposing to ask the question --
8 just to make sure I understand as I contemplate this, are you
9 asking to pose the question without specific reference to the
10 guidelines; in other words, to pose the question substantially
11 as you just framed it?

12 MS. NECHELES: Yes. I would ask you understand that
13 there are recommended guidelines, correct? And he might say,
14 no, I don't understand anything about that, but I think he will
15 say yes. And if he says no, I'm kind of stuck with it because
16 I can't ask him didn't you have conversations with your lawyer
17 about it. I understand that. So I'll sort of be stuck with
18 that. But if he says, yes, I'll say, and you understand that
19 the guidelines range are several years, you know, or more than
20 a couple years, and see what he says. What do you understand
21 the guidelines range, what do you believe that you are facing
22 in this case?

23 THE COURT: Thank you.

24 Let me ask one question before we leave for our lunch
25 break, just as a question to help me understand what the

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Ochetal - Cross

1 defense would lose if I were to uphold the government's
2 objection: Why is it better for the defense for the jury to
3 think that the witness is facing less time in jail should he
4 lie or that he is -- or may not be providing the government the
5 kind of substantial assistance, I expect you will argue, that
6 he should believe he is required to provide? Why is it better
7 for the jury, in your view, to have them believe that the
8 consequences of that are that he will go to prison for, I'll
9 say, two years initially instead of 15?

10 MS. NECHELES: Your Honor, it's not better. Maybe --
11 I just don't think that anybody believes that he thinks he's
12 going to jail for 15 years. But maybe I'll talk with my
13 co-counsel, who's very good at this stuff, over lunch and think
14 maybe I'm, like, making this is a foolish line of questioning.
15 Maybe it's not --

16 THE COURT: Thank you.

17 I'll consider it as well and be prepared to rule on
18 it.

19 Counsel, please try to be back here with the
20 expectation that we'll start testimony at, let's call it,
21 12:40. So I'd ask you to be back here 12:35, so about 20
22 minutes from now. I'll see you back then. Thank you, all.

23 MR. BELL: Thank you, Judge.

24 (Luncheon recess)
25

IBGTGRA4

Ochetal - Cross

AFTERNOON SESSION

(12:40 p.m.)

THE COURT: Counsel, is there anything else we should discuss about the question we discussed just before the break, Ms. Necheles?

MS. NECHELES: Your Honor, I will go -- the only problem would be if I ask him do you think you're facing 15 years and he says no, I don't. But if he says yes, I do, then I won't go further. But if he says no, I don't, then I will have go further on that.

THE COURT: To ask what he thinks he may be facing?

MS. NECHELES: What he believes and he understands. There are recommended sentencing guidelines, but if he says he's facing 15 years, I'm entitled to ask about state of mind, motivation. The Supreme Court held a defense attorney always gets to ask about that, that it's reversible error to not be able to ask about that. That's what I'm trying do do.

THE COURT: Understood. My principal concern about this line of inquiry is the lack of precision, I will call it, about the question you originally proposed to ask in that we don't know what his actual guidelines are. Second, unraveling what the guidelines are in light of *Booker*, it's the recommended, but as you know, and I'm sure you'll argue, the Court is not required to follow them. I need to look at them as the starting point, but they're not all the things that you

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Ochetal - Cross

1 know they're not.

2 MS. NECHELES: Hopefully I don't have to go there.
3 Hopefully I will get his state of mind out. My co-counsel
4 suggested to me a different way of approaching this, so I will
5 try that and hopefully that will work. But if it doesn't, I
6 will have to get into a little bit of what does he think and
7 why he thinks that.

8 And if he says the recommended sentence, I could say
9 the judge could sentence you to more than that, could sentence
10 you to less, but you could get sentenced to more, that's your
11 belief as you stand here.

12 THE COURT: Thank you. I don't have a fundamental
13 problem with that line of inquiry. I think it does call for
14 some clarification regarding what the guidelines mean to the
15 extent that he talks about the guidelines.

16 So let's get started.

17 MS. NECHELES: Do you want to hear my one comment?

18 THE COURT: Please.

19 MS. NECHELES: So your Honor, I would just ask that in
20 the second to last sentence where you're saying how you could
21 use the statement --

22 THE COURT: In the second paragraph?

23 MS. NECHELES: The third paragraph.

24 THE COURT: Please go ahead.

25 MS. NECHELES: So you start with: But you can use

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Ochetal - Cross

1 that statement to place other statements by defendant in
2 context or to understand the defendant's state of mind or as
3 evidence that someone said it's raining outside.

4 Your Honor, I would just say that that last part of
5 the example is unbelievably confusing. Because while I
6 understand what you're saying, I do think like someone with
7 a -- like well, why would you need someone that -- someone said
8 it's raining outside, it sort of suggests you're taking it for
9 the truth, so I would ask that that be omitted.

10 THE COURT: Thank you.

11 Counsel for the United States?

12 MS. LONERGAN: Your Honor, so the thing is we actually
13 will be arguing that some of the statements that are hearsay.
14 we're not going to argue them for the truth but we will argue
15 them for the fact they were said or the fact that someone was
16 expressing their belief at the time. Regardless of whether or
17 not that belief is true, so we can argue that another caller on
18 the call said X and that is what that caller thought, that's
19 not a truth, there's no truth value, we're not saying and then
20 the next argument would be and what the caller thought was
21 necessarily true.

22 MS. NECHELES: No, your Honor, that would be improper.

23 MS. LONERGAN: Right, that's the part that we do not
24 argue.

25 MS. NECHELES: No, the first part the argument, that

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Ochetal - Cross

1 the caller said something and they believed it was true would
2 be improper.

3 MS. LONERGAN: I don't think that that is improper,
4 your Honor, I think that's whole purpose of what is means
5 something was said.

6 THE COURT: I don't know that we need to do this now,
7 I would like to bring in the jury.

8 Is Mr. Ochetal ready to go?

9 Please bring him in.

10 As they're doing that, I'm going to ask a question,
11 what's the difference between saying that the speaker said this
12 because it was true as opposed to the speaker said this because
13 she thought it was true?

14 MS. LONERGAN: Your Honor, I will use -- I think we're
15 kind of speaking in vagaries. I will use an actual example
16 from this case. I think that where a lot of this came from is
17 there is a call with a police officer around the time of the
18 Avi Zangi arrest. It's not Theresa Haley but it's another
19 police officer. And that police officer says this is the
20 policy of the Brooklyn DA's Office.

21 And the point is we will never use that statement to
22 argue that in fact that was the policy of the Brooklyn DA's
23 Office, but we do think it's appropriate to argue that at the
24 same that Theresa Haley believed that the Brooklyn DA's Office
25 had a certain policy, another police officer also believed that

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Ochetal - Cross

1 the Brooklyn DA's Office had that policy. We're not saying
2 that in fact was the policy of the Brooklyn DA's Office, but
3 they were trying to attack the officer's credibility by saying
4 you essentially made this up, and we have another officer at
5 exactly the same time saying --

6 THE COURT: Thank you. I think this is a broader
7 conversation, because that distinction is elucidative.

8 Let's begin. Given the estimated time for
9 cross-examination, I think it makes sense for us to begin with
10 the trial now.

11 Mr. Daniels, can you please bring in the jury.

12 (Continued on next page)

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IBGTGRA4

Ochetal - Cross

1 (Jury present)

2 MS. NECHELES: May I continue, your Honor?

3 THE COURT: You may. Please proceed.

4 MS. NECHELES: Thank you.

5 BY MS. NECHELES:

6 Q. Sir, we were talking before the break about your
7 cooperation with the government, correct?

8 A. Yes.

9 Q. And you believe -- you understand that you could get 15
10 years in jail for the crimes you committed, right?

11 A. Yes.

12 Q. And that's what you believe you're facing right now, right?

13 A. Yes.

14 Q. And so you -- because of that, you entered into the
15 cooperation agreement, right?

16 A. I didn't know that specific sentence before I entered into
17 the cooperation agreement. I entered into the cooperation
18 agreement because I understood I did wrong and illegal
19 activities and that's where that led to. I did not know at the
20 time specifics of the sentence.

21 Q. When you entered in the cooperation agreement, you had a
22 lawyer, right?

23 A. Yes.

24 Q. And you entered into the cooperation because you thought
25 you could go to jail, right?

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Ochetal - Cross

1 You're saying you didn't know the specifics, but you
2 knew you could go to jail for what you had done.

3 A. I could, sure.

4 Q. And today, as you testify here today, you know that you
5 could get 15 years in jail for what you did, right?

6 A. Yes.

7 Q. And under the cooperation agreement you know that to get
8 the letter from the prosecutors that you have to give the
9 government substantial assistance, right?

10 A. I understood that I needed to provide information about
11 myself and other individuals. I don't know what "substantial"
12 is or isn't to them. I mean that's written in there, sure, but
13 I can only speak on myself and whatever information I have, so
14 if that's considered substantial, then it is, if it's not, then
15 it is what it is.

16 Q. So the agreement -- you're right, the agreement doesn't
17 define what "substantial assistance" means, right?

18 A. The agreement just tells me to tell the truth about things
19 I've done and things I witnessed and things others have done,
20 and that's, as far as I know, what I'm supposed to do.

21 Q. Well, I'm talking about what you're hoping to get out of
22 it, right? I'm talking about what you're hoping to get.
23 You're hoping to get the letter from the government which you
24 hope will help you get no time in jail, right?

25 A. I hope it would help, and nobody likes to go to jail, so

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Ochetal - Cross

1 sure.

2 Q. And to get that letter, you have to give substantial
3 assistance, and the letter doesn't -- and your cooperation
4 agreement doesn't define what substantial assistance means,
5 right?

6 A. That's subject to interpretation. I'm hoping that whatever
7 information I provide about myself and others is considered
8 substantial, but I don't know that.

9 Q. And you understand that it's the government who decides
10 whether you gave substantial assistance, right?

11 A. I know the government writes this letter and says what I
12 have done and information I provided, but I don't know for a
13 fact what they consider to be substantial.

14 Q. Right. And so as you sit here today, you know that if
15 don't please the government and make them think that you are
16 giving substantial assistance that you won't get that letter,
17 right?

18 A. That's true. I mean I don't know if what I say is good
19 enough or not, I'm just saying what I know.

20 Q. And in order to give that substantial assistance, you have
21 met with the government 17, 18 times, is that correct?

22 A. I've lost count, but numerous times.

23 Q. And along the way you have tried to give --

24 And you haven't testified in any other case, right?

25 A. At all, no.

IBGTGRA4

Ochetal - Cross

1 Q. And so it's what you have to say about these two gentlemen
2 that the government will decide whether -- in your mind, that's
3 what you understand, it's what you have to say about these two
4 gentlemen that will determine whether the government -- you
5 gave the government substantial assistance in prosecuting
6 someone else, right?

7 A. I believe it's the totality of my work.

8 Q. Now I want to just finish off with discussing Mr. Soohoo,
9 but to be clear, with respect to Mr. Soohoo, he used to take
10 you on trips, right?

11 A. He did.

12 Q. Then as time went on it started happening that after the
13 trips when you came back he would start to ask you for favors,
14 right?

15 A. Plenty of them.

16 Q. And in the beginning that didn't happen, right?

17 A. It happened, but not at the high rate that it does later.

18 Q. But at first when when you went on trips you thought he was
19 a friend taking you on a trip, right?

20 A. At the very beginning.

21 Q. So the fact that he was taking you on a trip at first
22 didn't seem like a bribe, right?

23 A. Not in the beginning.

24 Q. Because it wasn't linked to anything else, right?

25 A. Not until he started asking me to do things in return.

IBGTGRA4

Ochetal - Cross

1 Q. And then at some point he started asking you -- after you
2 came back from a trip he would ask you for something, right?

3 A. He did.

4 Q. And that's when you say now you -- that's when it seemed
5 like it being a bribe that it was linked to favors that he was
6 asking for you, right?

7 A. It was.

8 Q. Correct. That's when it became a bribe to you, right?

9 A. Yes.

10 Q. And it became clear that because of that specific link, it
11 wasn't just friendship, it was because he was bribing you,
12 right?

13 A. He was.

14 Q. Okay. Now sir, I want to talk a little bit about
15 Mr. Grant. And just directing your attention -- we have
16 already talked about how you regularly helped high ranking
17 officers with their friends' licenses, right?

18 A. Yes.

19 Q. And that was many people beyond Mr. Grant, right?

20 A. There were definitely several others for sure.

21 Q. Those are referred to as contracts, is that correct?

22 A. Yes, that's a term that was used.

23 Q. When an officer would ask you for a favor, it would be
24 called a contract, right?

25 A. Yes.

IBGTGRA4

Ochetal - Cross

1 Q. And that was not because there was any bribe, right?

2 MS. RAVENER: Objection.

3 THE COURT: Thank you. Can you rephrase the question,
4 counsel?

5 Q. Sir, the term "contract" just referred to a police officer
6 asking you for something, right?

7 A. If another officer or higher ranking officer asked me to
8 say X about a license, I had no idea of any other underlying
9 circumstances behind it, whatever that meant, I just knew that
10 hey, this is a high ranking official, I'm going to take care of
11 him and his friend. Whatever the arrangement after that, I
12 didn't care, I didn't deal with, didn't know about.

13 Q. That was what you referred to as contracts?

14 A. Yes.

15 Q. And sir, that was the culture in the licensing division,
16 right?

17 A. That it was.

18 Q. That you would just help out other officers get licenses or
19 push through the paperwork quickly for their friends, right?

20 A. Yes, I would say so.

21 Q. And one of the people you testified that you wanted to help
22 out and who asked for help on some occasions was Mr. Grant,
23 right?

24 A. Sure.

25 Q. And am I correct that you -- part of the reason you wanted

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Ochetal - Cross

1 to help out Mr. Grant was because you liked him?

2 A. I don't know if I like him per se. I did not dislike him.
3 I thought he was a cool guy.

4 Q. Am I correct that you previously told the government that
5 Mr. Grant was one of the boys, he was somebody that was very
6 well liked?

7 MS. RAVENER: Objection.

8 THE COURT: Thank you. You can answer the question.

9 A. I knew him to be well liked, yes.

10 Q. And he was just like a real guy's guy, guys like him,
11 right?

12 MS. RAVENER: Objection.

13 THE COURT: Sustained.

14 Q. Was that what you told government?

15 MS. RAVENER: Objection.

16 THE COURT: Thank you, sustained.

17 Q. And so with respect to Mr. Reichberg, this was somebody
18 that you knew to be a friend of Jimmy Grant, right?

19 MS. RAVENER: Objection, foundation.

20 THE COURT: Thank you, you can answer the question.

21 A. I knew him to be associated with Jimmy Grant, I don't know
22 what level.

23 Q. When Mr. Reichberg came in, he told you he was really close
24 to Jimmy Grant, right?

25 A. I don't know if the words "really close" came up, but yeah,

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Ochetal - Cross

1 I would say they were close in some regard.

2 Q. And so you believed at the time that he was a friend of
3 Mr. Grant's, right?

4 A. Friend or associate. I didn't think about making the
5 distinction between the two. I was told Jimmy Grant had
6 someone to come in and take care of him, I didn't care if they
7 were friends or associates or anything, I did what I was told.

8 Q. So first Mr. Villanueva had texted you that Jimmy Grant was
9 having someone come in that day?

10 A. Yes.

11 Q. In fact, it was both Mr. Reichberg and Mr. Rechnitz who
12 came in, Jona Rechnitz?

13 A. They both came in but I don't remember the text message
14 messaging noting that Rechnitz was coming in, the text message
15 only mentioned Jeremiah Reichberg coming in.

16 Q. Okay. And when he came in, he actually came in with Jona
17 Rechnitz also, right?

18 A. He did.

19 Q. And when Mr. Reichberg came in, he kind of acted like a big
20 shot, right?

21 A. Yeah.

22 Q. He was kind of being a jerk, right?

23 A. Arrogant.

24 Q. He was arrogant and jerky, right?

25 A. That's how I described it.

IBGTGRA4

Ochetal - Cross

1 Q. And am I correct that he really didn't understand the
2 licensing process at all, right?

3 MS. RAVENER: Objection.

4 THE COURT: Sustained. Counsel, can you please
5 rephrase.

6 Q. Well, you testified on direct that he asked -- he thought
7 he was going to get a gun license the same day, right?

8 A. Yes.

9 Q. And that was not the process, right?

10 A. No.

11 Q. No one got a license the same day, right?

12 A. No.

13 Q. He had to go through a whole process, right?

14 A. Yes.

15 Q. So was it your understanding that Mr. Reichberg didn't know
16 what he was talking about?

17 MS. RAVENER: Objection.

18 THE COURT: Thank you. You can answer the question.

19 A. I didn't give it any thought as far as what he was talking
20 about, it just wasn't my position. When high-ranking people
21 tell me somebody is coming in, people can drop names all the
22 time, I don't pay it any mind, I just go about with what I got
23 to do, so I kind of left it at that.

24 Q. But no one ever told you to give Mr. Reichberg a license
25 that day, right?

IBGTGRA4

Ochetal - Cross

1 A. On that day?

2 Q. Yeah.

3 A. No, he just simply requested it that day and it ended
4 there.

5 Q. And you said no, that's not how it works, right?

6 A. I did say that.

7 Q. And you also testified on direct that he mentioned the
8 Chief of Police Phil Banks, right?

9 A. Yes.

10 Q. And he said he knew him, right?

11 A. He said he knew him.

12 Q. And to be clear, Mr. Banks never called you about anything
13 here, right?

14 A. Mr. Banks never contacted me directly at any point.

15 Q. Never told you you should do something for Jeremy, make
16 sure that Jeremy Reichberg gets this license, never called you
17 about that at all, right?

18 A. I never spoke to Chief Banks once in my life.

19 Q. So you did not think that Mr. Reichberg was saying well,
20 Chief Banks is saying I should get this license, right?

21 A. He did not say that.

22 Q. He was just bragging about being a big shot, right?

23 A. He was bragging.

24 Q. And bragging about knowing high-ranking officers, right?

25 A. He did brag about that.

IBGTGRA4

Ochetal - Cross

1 Q. But then you told him you needed some documents, right?

2 A. I did.

3 Q. And he had brought in some documents with him, right?

4 A. At the time or later?

5 Q. On that date.

6 A. I don't remember exactly what he brought in, but it was not
7 enough documentation. Say for some oddball reason I wanted to
8 approve the license the same day, I didn't have the documents I
9 would need to approve the license that day.

10 Q. He didn't bring in everything but he brought in some stuff?

11 A. Some stuff, I guess.

12 Q. Mr. Rechnitz, Jona Rechnitz, had not brought in any
13 documents, right?

14 A. He had nothing with him that day, and that's why he applied
15 another day.

16 Q. Because he had no documents you didn't even begin to
17 process his application, right?

18 A. It's not possible.

19 Q. You had said you have to come back with some documents,
20 right?

21 A. At the very least an application.

22 Q. And Mr. Reichberg had brought some documents in, right?

23 A. I definitely remember him having an application for sure.

24 Q. And he also had a letter of necessity with him, too, right?

25 A. I'm not sure that he did. It's entirely possible because

IBGTGRA4

Ochetal - Cross

1 it is part of the downloadable application, so it's possible
2 that that was there, probably should be there. I don't
3 remember it being there, but being that it could be downloaded
4 with the initial application, it's very possible it was there
5 with the application.

6 Q. So to be clear, the application for gun license is on the
7 internet, you can go there and download it, right?

8 A. Yes.

9 Q. And along with that there is also the letter of necessity
10 that you can download, the form that needs to be filled out,
11 right?

12 A. Yes.

13 Q. And am I correct that that's what Mr. Reichberg had on that
14 first day, the stuff that was downloaded he brought in?

15 A. Not a hundred percent sure, but if he had anything, it
16 definitely would be what was downloadable off the internet.

17 Q. And that's why he was saying he thought he had the
18 paperwork and it should just go through that day, right?

19 MS. RAVENER: Objection.

20 THE COURT: Thank you. Sustained.

21 Q. Do you recall that that's what he said to you, that he had
22 the paperwork and he thought that's all he would need, right?

23 A. I don't recall him saying hey, I got everything I need,
24 this should be done. I don't recall that conversation. If it
25 happened, it happened, but it wouldn't matter to me, it would

IBGTGRA4

Ochetal - Cross

1 just go in one ear and out the other. So it would make no
2 difference to me, it could have been anybody.

3 Q. Because he was wrong, right, he needed more paperwork,
4 right?

5 A. Yes.

6 Q. And that's what you told him, right?

7 A. I did.

8 MS. NECHELES: I just want to look for a minute at the
9 application that we have in evidence, which is Mr. Reichberg's.
10 What exhibit is it?

11 Government Exhibit 732 in evidence, could I put on the
12 screen to show the jury and the witnesses, your Honor?

13 THE COURT: Yes, you may.

14 MS. NECHELES: Thank you.

15 BY MS. NECHELES:

16 Q. Am I correct that this is what was kept on the computer
17 about Mr. Reichberg's application?

18 A. On the computer, I would say yes, this is what would be on
19 the computer.

20 Q. This is not the form that he filled out and brought in to
21 you that day, right?

22 A. This is just information that I entered based on the form
23 he brought in to me. This is not the actual form.

24 Q. Just to be clear, his file is missing, right?

25 A. It is.

IBGTGRA4

Ochetal - Cross

1 Q. So we don't know what was in the file, right?

2 A. We do not.

3 Q. But this is what was kept on the computer separate from the
4 file, right?

5 A. This is just information in the computer system that can be
6 printed out on this page and that's it.

7 Q. So when you look at what he says is the business address,
8 the corporation name is Taly Diamonds, Limited, right?

9 A. Right.

10 Q. And it does not say that he was the owner there, right?

11 A. No, I don't see it saying that.

12 Q. And am I correct that -- based on your work in the
13 licensing division, one of the people, one of the types of
14 people who would come in for a gun license, carry licenses,
15 carry business licenses, were people in the diamond industry,
16 right?

17 A. There have been other individuals in the diamond industry,
18 yes.

19 Q. And people in the diamond industry, sometimes they're
20 carrying extremely valuable diamonds on their person, right?

21 A. I agree.

22 Q. And they work in a location typically that is known to be
23 where people who have diamonds work, right?

24 MS. RAVENER: Objection.

25 THE COURT: Thank you. Sustained.

IBGTGRA4

Ochetal - Cross

1 Q. Well, you talked on direct -- you were asked a lot of
2 questions about known risk factors about what kind of people
3 would get a carry license, business carry license, right?

4 A. Yes.

5 Q. Do you recall those questions?

6 And one of the things you testified about was that if
7 the business was known to be in a risky location, right?

8 A. Yes.

9 Q. And the diamond industry on 5th Avenue around 47th Street
10 is known to be the diamond -- where the diamond dealers are,
11 right?

12 A. That's what it is, yes.

13 Q. And diamond dealing -- people who are carrying around
14 diamonds and very valuable jewels like that are sometimes
15 targeted for robberies, right?

16 A. Yes, they could be targeted.

17 Q. So that's a known risky location or operation, right?

18 MS. RAVENER: Objection.

19 THE COURT: Thank you. Sustained. Can you please
20 rephrase?

21 Q. In the course of your -- as something that would qualify as
22 a risk factor that would entitle someone to have a pistol
23 license, that would be the kind of thing, right?

24 A. It would definitely be something that would be considered
25 for sure.

IBGTGRA4

Ochetal - Cross

1 Q. Because you said before people have to show cause to get a
2 gun permit, a carry permit, right?

3 A. Well, for -- there's differentiation between limited and
4 full premise business, so it's -- I'm saying it's a little more
5 to it than that.

6 Q. Right. You have to show a risk factor, you have to show
7 risk factors, reasons that you would need a carry?

8 A. A risk -- a 24/7 risk is what I kind of want to try to say,
9 if that makes sense.

10 Q. Not just that your business location is dangerous, but
11 there's another risk at other times as well, is that what
12 you're saying?

13 A. Yeah, different times you go from place to place, you're
14 picking up diamonds or cash or whatever valuables at midnight,
15 you know, not at 3 o'clock. So that's why I was trying to
16 differentiate between several different types of carry
17 licenses.

18 Q. And one thing that would establish that is if someone were
19 a diamond salesman, right?

20 A. Yes.

21 Q. And because they would be carrying diamonds around to
22 different locations, right?

23 A. Sure, that could make them a risk.

24 Q. And you're aware that in the diamond industry things are
25 given out on consignment often, right, diamonds are given out

IBGTGRA4

Ochetal - Cross

1 on consignment?

2 MS. RAVENER: Objection.

3 THE COURT: Thank you. You can answer the question if
4 you know the answer.

5 A. I'm not sure what you mean.

6 Q. Well, people, salesmen, would take diamonds from a place
7 like Taly Diamonds and take them somewhere else to show them to
8 potential clients, right?

9 MS. RAVENER: Objection.

10 THE COURT: Thank you. Sustained.

11 Q. Well, are you aware, is that one of the things that would
12 qualify someone to get a diamond -- or a carry gun permit?

13 MS. RAVENER: Objection.

14 THE COURT: Thank you. You can answer that question.

15 A. Again, it comes back to the type of permit you want to
16 issue. Just because that exchange is happening, when is it
17 happening? Is it happening on a Saturday? Is it happening on
18 a Sunday? Because a full carry you can come and go whenever,
19 whatever day, it's not restricted to like business hours. So
20 it's hard to say. I can't determine that. It's just based on
21 like hyperbole, I guess, like I have to see when is this person
22 going in and doing these transactions. So it would be a
23 case-by-case basis.

24 Q. But that would be the type of thing that you would be
25 looking at?

IBGTGRA4

Ochetal - Cross

1 A. I would be looking at that.

2 Q. And someone who established that they were a diamond
3 salesman and who were carrying around diamonds to different
4 locations and selling them at different locations, and that
5 would be factors that you would be considering, right?

6 A. Yes, you could definitely consider those factors.

7 Q. And am I correct that that is what Mr. Reichberg told you
8 that day that he was doing?

9 A. I don't remember exactly what he told me as far as his
10 business practice goes. He definitely did tell me he dealt
11 with wholesale diamonds within the diamond district. I don't
12 recall his days and hours and such like that, but he did
13 explain that he was a diamond wholesaler in the diamond
14 district.

15 Q. And he was selling diamonds to different people, is that
16 correct?

17 A. Something to that extent.

18 Q. And you don't remember the details of it, but you remember
19 him telling you that he was carrying around diamonds to
20 different locations?

21 A. He did say that.

22 Q. And that's why he said he needed a carry permit, right?

23 A. That's why he said it. I don't know if it was on his
24 letter of necessity because I don't have it, I don't remember
25 it, but he mentioned something about carrying diamonds.

IBGTGRA4

Ochetal - Cross

1 Q. And now that day when he -- he had only given you some of
2 the paperwork, am I correct you gave him a list of what other
3 paperwork was needed?

4 A. I either verbally told him -- I'm not sure if he wrote it
5 down or I kind of gave him a checklist saying hey, give me this
6 stuff. There was definitely a conversation about hey, you need
7 additional documents.

8 Q. Well, let me show you what is in evidence as Government
9 Exhibit 536A.

10 MS. NECHELES: Could we show that to him and the jury,
11 your Honor?

12 THE COURT: You may.

13 MS. NECHELES: Thank you. And page 58.

14 Q. If you look at line 51328.

15 A. Yes.

16 Q. You see there that David Villanueva texted you that he lost
17 the list of documents, you might have to call him. Right?

18 A. Okay.

19 Q. And so does that refresh your recollection that you had
20 given him a list of what he needed to bring to you?

21 A. I must have gave him a list as opposed to verbally telling
22 him.

23 Q. And at the end you see 51332?

24 A. Mm-hmm.

25 Q. You said laughing out loud, he has diamonds in his head,

IBGTGRA4

Ochetal - Cross

1 laughing out loud, is that correct?

2 A. Yes.

3 Q. And that's because he had been talking to you about the
4 diamond business and how he carried around diamonds, right?

5 A. I would view that text message -- obviously it was known he
6 dealt with diamonds, and I think it was kind of a joke between
7 me and Dave saying he forgot because his head is all filled
8 with diamonds. It was a joke, you know, that's what I'm taking
9 it as.

10 Q. It was a joke?

11 A. He forgot the documents. How could he possibly forget my
12 list? So I'm assuming I made a joke, he's got too many
13 diamonds to remember.

14 Q. It was a joke, but in part based on that he had been
15 talking about diamonds with you, right, in his business, right?

16 MS. RAVENER: Objection.

17 THE COURT: Thank you, you can answer the question.

18 A. He mentioned he was in the diamond business, so I had no
19 reason to not believe it. I took it at face value that's what
20 he did.

21 Q. Am I correct that when he first came in, part of what you
22 did was interview him, right?

23 A. When he came in as I was putting information in the
24 computer, yeah.

25 Q. You interviewed him about what his job responsibilities

IBGTGRA4

Ochetal - Cross

1 were?

2 A. Yeah.

3 Q. That was your process, right?

4 A. In this particular case.

5 Q. And he was kind of a little flaky, right?

6 MS. RAVENER: Objection.

7 THE COURT: Counsel, can you rephrase the question?

8 Q. Isn't part -- well, isn't part of what the joke was there
9 is that Mr. Reichberg was a little not organized?

10 A. I would say not organized and vague as opposed to flaky.

11 Q. All right. And after this, am I correct that you were
12 tasked to contact Mr. Reichberg about getting more paperwork,
13 right?

14 A. Yes.

15 Q. Who tasked you with that? Who told you to do that?

16 A. It would have either been -- I'm only assuming, I don't
17 remember, Sergeant Villanueva or Jimmy Grant or Jimmy Grant
18 through Sergeant Villanueva, something to that effect, I don't
19 remember.

20 Q. Would you have had that kind of discussion with Mr. Grant?

21 MS. RAVENER: Objection.

22 THE COURT: Thank you. Can you rephrase the question,
23 please, counsel?

24 Q. You say it might have been Mr. Grant, right?

25 A. Might have been, I don't know.

IBGTGRA4

Ochetal - Cross

1 Q. Is that the kind of discussion that you used to have with
2 Mr. Grant?

3 MS. RAVENER: Objection.

4 THE COURT: Thank you. You can answer the question.

5 A. I wouldn't speak to Mr. Grant on a regular basis like that.
6 I mean obviously I knew who he was and all of that, but -- it's
7 possible I spoke to him. I tend to lean on the side that I
8 spoke to Dave and Dave reached out to him, because I remember
9 Dave being closer to James Grant than I was. He knew him
10 before I did. So it could be either one, I don't remember. If
11 I had to guess, I would tell Dave hey, tell Jimmy to tell
12 Mr. Reichberg he needs these documents, and that's how we get
13 them, or here's my email, however it came about, but it would
14 be either one.

15 Q. To be clear, mainly you would tell things to Mr. Villanueva
16 but sometimes you would say things directly to Mr. Grant, is
17 that correct?

18 A. It's possible. I can't remember.

19 Q. I'm not talking about the specific incident, I know you
20 don't remember, but you are saying sometimes you would tell
21 things to Mr. Grant but mainly you would tell things to
22 Mr. Villanueva about people that Mr. Grant was trying to help.
23 Is that a fair characterization of your testimony?

24 A. I really don't know. I would have to say I more likely
25 lean towards talking to Sergeant Villanueva first, but that

IBGTGRA4

Ochetal - Cross

1 doesn't mean a hundred percent I never spoken to Jimmy Grant
2 about anything pertaining to license division stuff. It's
3 possible even maybe while he was in the office or something
4 like that. I honestly don't recall, but I would not rule it
5 out.

6 Q. So just to be clear, the kinds of things you would either
7 be speaking to Mr. Villanueva for him to speak to Mr. Grant or
8 directly to Mr. Grant are saying what other documents or things
9 were needed to complete the application, right?

10 MS. RAVENER: Objection.

11 THE COURT: Thank you, you can answer the question.

12 A. Can you repeat that?

13 Q. The kinds of things that you would have been speaking to
14 Mr. Grant about or to Mr. Villanueva for him to speak to
15 Mr. Grant about are what other documents were needed to
16 complete the application, right?

17 MS. RAVENER: Objection.

18 THE COURT: Thank you, sustained. Can you please
19 rephrase the question?

20 Q. Sir, you were just testifying a minute ago that there were
21 occasions when you spoke to Mr. Villanueva to tell something to
22 Mr. Grant, and that was about people who Mr. Grant had asked
23 friends of his to get an application processed, right?

24 A. Yes.

25 Q. And sometimes you may have also spoken to Mr. Grant

IBGTGRA4

Ochetal - Cross

1 directly, but you don't recall, right?

2 Is that your testimony?

3 A. Yes.

4 Q. And the kinds of things that those conversations would have
5 been about, am I correct, is about documents that were needed
6 for the applications that you were processing?

7 MS. RAVENER: Objection.

8 THE COURT: Thank you. Can you rephrase the question.
9 Conversations with whom?

10 Q. The conversations that you had with Mr. Villanueva giving
11 him information to pass to Mr. Grant would be about documents
12 that were needed to complete the applications, right?

13 MS. RAVENER: Objection.

14 THE COURT: You can answer the question.

15 A. Yeah.

16 Q. And that would be the kind of -- if you had those
17 conversations with Mr. Grant, that would be the same thing, the
18 kind of documents that would be needed, you would be explaining
19 to him what was needed, right?

20 MS. RAVENER: Objection.

21 THE COURT: Thank you, sustained.

22 Q. Do you recall that -- well, you testified you may have
23 spoken to Mr. Grant about applications also, right?

24 A. I may have.

25 Q. And if you did, am I correct that your recollection is you

IBGTGRA4

Ochetal - Cross

1 would be speaking to him about documents that were needed for
2 the files?

3 MS. RAVENER: Objection.

4 THE COURT: Thank you, sustained.

5 Q. But here, anyway, what you recall is that you spoke to
6 someone about what other documents were needed for the files,
7 right?

8 A. Yes.

9 Q. When you say you -- and then you were tasked to call
10 Mr. Reichberg, right?

11 A. I'm not sure I remember, but I might have or I might have
12 contacted him through email for this documentation.

13 Q. Have you seen an email?

14 A. Have I what?

15 Q. Have you seen an email where you contacted him about this?

16 A. No.

17 Q. But you recall having reached out to Mr. Reichberg again to
18 tell him what other documents were needed, right?

19 A. I would say I feel like I did.

20 Q. And then you recall that you say you believe you did
21 receive something, right?

22 A. I do recall receiving something.

23 Q. And you said you either thought that you possibly had the
24 bank statements, correct?

25 A. Possibly.

IBGTGRA4

Ochetal - Cross

1 Q. And you possibly had other documents that were required,
2 like the safeguard letter and the cohabitant letter, right?

3 A. Yes, that was possibly there.

4 Q. And sir, just to be clear, if someone -- there were very
5 specific things that were needed, correct?

6 A. Yes.

7 Q. And specific things that a letter of necessity would need
8 to state, right?

9 A. Yes.

10 Q. And would the letter of necessity be the letter you got
11 from the employer?

12 A. The letter of necessity came from -- was supposed to come
13 from the owner of the business, because sometimes the owner of
14 the business wanted a carry license and sometimes the owner of
15 the business was endorsing an employee for that task of having
16 the firearm.

17 Q. So to get a carry license or even a business carry license,
18 either a full or restricted one, the owner of the business
19 would have to say that the person was carrying diamonds or
20 engaged in diamonds and was in the diamond -- working for the
21 company, right?

22 A. That would be part of it, yeah.

23 Q. And maybe would have to say some other things, too, right?

24 A. There usually was more to it than that.

25 Q. And you were familiar with the process, you would know what

IBGTGRA4

Ochetal - Cross

1 had to be said in that letter, right?

2 MS. RAVENER: Objection.

3 THE COURT: You can answer the question.

4 A. If you were familiar with the process, you might be able to
5 explain yourself further.

6 Q. And if somebody asked you when they were applying for the
7 license and you said to them you need a letter of necessity and
8 they asked you what does it need to say, you would explain to
9 them what it needed to say, right?

10 MS. RAVENER: Objection.

11 THE COURT: Could you rephrase the question, please.

12 Q. It was your practice, sometimes would people ask you what
13 does the letter of the necessity need to say?

14 A. I'm sure there were times where people would ask what does
15 this mean, what has to be in here, and I would explain to them
16 you need to show proper cause, you need to explain why you need
17 a carry license. What differentiates you from every other
18 civilian in this city that does not have this privilege?

19 Q. And if they were in the diamond industry, you would explain
20 what the owner needs to say about diamonds or carrying
21 diamonds?

22 MS. RAVENER: Objection.

23 THE COURT: Thank you. Can you please rephrase the
24 question, counsel.

25 Q. Do you recall talking to someone in the diamond industry

IBGTGRA4

Ochetal - Cross

1 about that?

2 A. I'm not sure as far as exactly what to say, I kind of would
3 assume on what I just said they would know what to say.

4 Q. And by explaining to people what needed to be in that
5 letter, there was nothing improper to explain that to people,
6 right?

7 MS. RAVENER: Objection, mischaracterizes the
8 testimony.

9 THE COURT: Thank you. Counsel, please rephrase.

10 Q. Did you think that was proper to do, to explain to people
11 what needed to be in the letter of necessity?

12 MS. RAVENER: Objection.

13 THE COURT: Thank you. You can answer the question.

14 A. I never gave that any thought. If they asked me about the
15 letter of necessity, I explained what needed to be in -- I mean
16 I don't think I gave specifics like dot per dot, I always
17 thought it to be kind of self-explanatory, but if someone had
18 an issue with it, I would kind of give them a guideline of not
19 exactly word for word what to say.

20 Q. But guidelines of what kind of things they needed to say in
21 there?

22 A. Yeah, so they had an understanding of what it meant.

23 Q. I want to turn your attention to at some point
24 Mr. Reichberg's file disappeared, you said.

25 A. Yes.

IBGTGRA4

Ochetal - Cross

1 Q. And in fact, you had looked -- went looking for the file,
2 right?

3 A. Yes.

4 Q. You had seen the file in a filing cabinet, right?

5 A. Yes.

6 Q. And at some point you became aware that there was an
7 investigation into Mr. Reichberg and Mr. Grant and others,
8 right?

9 A. Yes.

10 Q. And that was in the newspapers, right?

11 A. Yes.

12 Q. And at that point you were concerned about the file, right?

13 A. Yes.

14 (Continued on next page)

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IBGKGRA5

Ochetal - Cross

1 BY MS. NECHELES:

2 Q. You were already concerned about what you had done in the
3 past, right?

4 A. Not in this instance. I wasn't so worried about this
5 particular file in this case.

6 Q. Right, you weren't worried about Mr. Reichberg's file,
7 that's what you're saying, right?

8 A. I knew he was in an incident, and I knew there was an
9 incident at the time, and the folder needed to be pulled.

10 Q. Let me focus on what that means. What you're saying is you
11 had no worries at that point about what you had done with
12 respect to Mr. Reichberg, right?

13 A. I wouldn't say complete worries. I knew things had been
14 done, but I also understood there were other people involved in
15 this file, so I kind of assumed that they knew about it and
16 were working on it or whatever. I wouldn't say I was
17 completely unworried, but knowing there was other people
18 involved, I just knew what I had to do, and my first thing was
19 to pull the file.

20 Q. So just stepping back for a minute, you were looking at the
21 file because -- you were looking for the file because you knew
22 that maybe his license had to be suspended at that point,
23 right? Is that your testimony?

24 A. No. I was looking for the file because it's just protocol,
25 when somebody's in an incident, to pull the file. And being

IBGKGRA5

Ochetal - Cross

1 that there was an incident, it was part of my thing, you pulled
2 the file, you get the file, you get the information, you
3 contact the licensee, tell them to come down, surrender their
4 license, surrender their firearm, and it just goes on and on.
5 So it was just part of the process.

6 Q. Okay. So the incident that you're talking about was it was
7 in the newspapers that he was under investigation, right?

8 A. Yes.

9 Q. And that means that when someone is under investigation in
10 that way, you need to go through a process that leads to the
11 suspension of his license, right?

12 A. Yes.

13 Q. So that's why you went looking for the file, right?

14 A. Yes. It was part of what my job was at the time.

15 Q. You did not think that there was something improper that
16 you had done with Mr. Reichberg, right?

17 A. I didn't think it at the time.

18 Q. Right.

19 A. I mean, I know the file was rushed and all sorts of stuff,
20 but I didn't think it at the time. I thought the first thing
21 was to do was just to get the file first.

22 Q. So you went to get the file because you thought that you
23 had to go through a certain process, right? Because you were
24 doing your job about the process that had to be done when
25 somebody -- you learn that somebody was under investigation,

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Ochetal - Cross

1 right?

2 A. Yes.

3 Q. And you saw that -- you couldn't find the file at that
4 point; am I correct?

5 A. I couldn't find it. Coming into work, I kind of knew that
6 I should be the one to find it, so that's why as soon as I got
7 in, it was the first thing I did. Because I dealt with it, so
8 I knew I should be the first one to find the file, and I didn't
9 find it.

10 Q. You knew you should be the first one to find it because
11 that was your job at that time, right?

12 A. Well, not only was it my job, it was my case. So, I mean,
13 my name was on it, so...

14 Q. So you wanted to make sure you did the proper thing there,
15 right?

16 A. I wanted to make sure that I retrieved this file first
17 before anybody else did.

18 Q. And that was because you were going to start the process,
19 and you were not concerned that this was Jimmy Grant's friend
20 that you were starting this process of suspension on, right?

21 MS. RAVENER: Objection.

22 THE COURT: Thank you.

23 Counsel, can you rephrase?

24 BY MS. NECHELES:

25 Q. Well, when you made that decision, you weren't worried that

IBGKGRA5

Ochetal - Cross

1 this was Jimmy Grant's friend that you were going to go forward
2 in the process that would lead to suspension of his license?

3 MS. RAVENER: Objection.

4 THE COURT: Thank you.

5 Sustained.

6 BY MS. NECHELES:

7 Q. Okay. Sir, what you were starting off to do was start a
8 process that would lead to suspension of Mr. Reichberg's
9 license, right?

10 A. Yes.

11 Q. And at the time that you started that process, you knew
12 that this was Mr. Grant's friend, right?

13 MS. RAVENER: Objection.

14 THE COURT: Thank you.

15 Sustained.

16 Q. Well, you testified about that before, right?

17 MS. RAVENER: Objection.

18 THE COURT: Thank you.

19 Sustained.

20 Q. Okay. In your mind, you believed that Mr. Reichberg was
21 associated with Jimmy Grant, right?

22 A. Yes.

23 Q. And Mr. Grant had asked for -- had been the one who
24 introduced him to the licensing division, right?

25 A. That's correct.

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Ochetal - Cross

1 Q. But you were not worried that Mr. Reichberg was associated
2 with Mr. Grant, right?

3 A. The association wasn't what worried me. I was just worried
4 because I handed in an incomplete file.

5 Q. So you wanted to make sure you did the right thing now and
6 suspended it, right?

7 MS. RAVENER: Objection.

8 THE COURT: Thank you.

9 You can answer the question.

10 THE WITNESS: It wasn't even really about suspending,
11 it was just about finding his folder and having it before
12 anybody else did, because I knew that, you know, whatever
13 shortcuts were taken were shortcuts that I contributed to, so
14 if somebody else finds it, they're going to look at me and be
15 like, oh, you didn't do your job, so...

16 Q. At the time, am I correct that many files -- you found that
17 many files were missing then?

18 A. There were several files that were missing.

19 Q. When this occurred, when you went and looked for that file,
20 this was several months before the date on which Mr. Reichberg
21 sold his gun, right?

22 A. When I last saw the file?

23 Q. When you went to look for the file, and it was missing.

24 A. When I looked for the file, it was on the day it became an
25 incident, is that what you're asking?

IBGKGRA5

Ochetal - Cross

1 Q. He had not sold his gun yet, right?

2 A. No.

3 Q. It was well before he sold his gun, right?

4 MS. RAVENER: Objection; foundation.

5 THE COURT: Thank you.

6 You can answer the question, if you know the answer.

7 THE WITNESS: I don't know the timeline, how soon
8 after he became an incident because he turned his gun in. I
9 wasn't...

10 BY MS. NECHELES:

11 Q. You know when you went and looked at the file, it was
12 before he sold his gun, right?

13 MS. RAVENER: Objection; foundation.

14 THE COURT: Thank you.

15 You can answer the question.

16 THE WITNESS: When I last saw the file, it was before
17 he was even an incident.

18 Q. So you last saw the file -- do you remember when that was?

19 A. A couple of months before he became an incident.

20 Q. And then he became an incident at some point --

21 A. Yes.

22 Q. -- meaning he was in the newspapers as being under
23 investigation, right?

24 A. Yes.

25 Q. And when he first was in the newspapers being under

IBGKGRA5

Ochetal - Cross

1 investigation, he had not sold his gun yet, right?

2 MS. RAVENER: Objection.

3 THE COURT: Thank you.

4 If you know the answer, you can respond.

5 THE WITNESS: He sold his gun after that. I don't
6 know when he sold his gun. I wasn't...

7 BY MS. NECHELES:

8 Q. Because after he became an incident, as you call it, then a
9 process was started to suspend his license, right?

10 A. Yes.

11 Q. And it was after that process was started, that he sold his
12 gun, right?

13 MS. RAVENER: Again, objection, your Honor.

14 THE COURT: Thank you.

15 You can answer the question, if you know the answer.

16 THE WITNESS: Just repeat that.

17 Q. It was after that process was started to suspend his
18 license, that he sold his gun, right?

19 A. I still don't remember when he sold his gun, though.

20 Q. Okay. I'm just not asking the actual date. I'm saying:
21 Do you recall that there was a process started that would lead
22 to the suspension of his license, and he was contacted?

23 MS. RAVENER: Objection; asked and answered.

24 THE COURT: Thank you.

25 You can answer the question.

IBGKGRA5

Ochetal - Cross

1 MS. RAVENER: Lack of foundation.

2 THE WITNESS: I just don't remember that process.

3 When he became an incident, I didn't handle it.

4 BY MS. NECHELES:

5 Q. Oh, you didn't handle it? No?

6 A. No. I was tracking down the folder, never found the
7 folder, and at some point, I found out that he came in and
8 turned in his firearm.

9 Q. Okay. And it was some point thereafter; am I correct?

10 A. Thereafter what?

11 Q. Thereafter, after the date when you couldn't find the file?

12 A. It was after a date when I couldn't find the file, that he
13 came in and surrendered his firearm.

14 Q. And just as a matter of process, when there is an incident,
15 after that, an investigation is started that leads to a
16 suspension of the license?

17 A. It's initially automatically suspended, and you turn your
18 license in, you turn your firearm in, and then you're suspended
19 until an investigation is done, and a review is done, and it's
20 determined if you get it back or not.

21 Q. Okay. So, first, there's the incident, and then after,
22 there is a process started, and someone's license is suspended.
23 That's how the process works, right?

24 A. Yes. I mean, technically, as soon as you're an incident,
25 your license is supposed to be suspended. So, the same day, if

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Ochetal - Cross

1 we get a report down from DCJS, let's just say, that an
2 applicant was arrested for anything, it's that day, they're an
3 incident that day, we try that day to contact them and get the
4 gun and license that day.

5 There's really never supposed to be a buffer because
6 once they're an incident, it's that day, like. So if they're
7 an incident, and we wait on it, we don't get the gun or the
8 license for a month, and they go out and commit a crime with
9 the gun, it comes back to the New York City Police Department.
10 So we were always supposed to do our best to get it right away
11 if we got that report back from DCJS. That didn't always
12 happen, but if that came down, we tried to get it as soon as
13 possible.

14 Q. Okay. So, then, what you just described was when you get
15 notice of an arrest, right?

16 A. Right.

17 Q. But that was not the incident that you talked about here,
18 right?

19 MS. RAVENER: Objection.

20 THE COURT: Thank you.

21 You can answer the question.

22 THE WITNESS: There -- I'm sure there was a notice
23 that came down. To be perfectly honest, I knew about it coming
24 into work because of the papers, but there obviously was
25 already a report generated from upstairs down to us. So it was

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Ochetal - Cross

1 already known before I even got in.

2 BY MS. NECHELES:

3 Q. When you got in that day, it was already --

4 A. It was already known. People were talking about it, people
5 were going crazy, people were looking. I came in, it was like,
6 hey, I'm going to try and find his file, so I thought, hey, I
7 know where it is, and it wasn't where I thought it was. So it
8 was already known by -- I don't know. I got in that day, I
9 don't know -- I normally got in around, whatever, 6:30; by
10 4:30, it was already known. People were already in the office
11 talking about it.

12 Q. And people were looking for the file; am I correct?

13 A. Oh, yeah, people -- I'm sure people were already looking
14 for it.

15 Q. And then I want to direct your attention to the document
16 relating to him surrendering the license, which is Government
17 Exhibit -- what's the number -- 733, if you could.

18 MS. NECHELES: Your Honor, that's in evidence. Can we
19 put that on the screen?

20 THE COURT: You may.

21 MS. NECHELES: Okay.

22 BY MS. NECHELES:

23 Q. This was the request for permission to sell firearms,
24 right?

25 A. Yes.

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Ochetal - Cross

1 Q. Am I correct that the date on that -- is the date 3/10 --
2 I'm sorry, that's not the date. On the second page, it's
3 3/2/16; am I correct?

4 A. That 3/2/2016 is the day that this particular gun dealer
5 bought a firearm.

6 Q. Okay. And this form, am I correct, is something that is
7 filled out by the gun dealer?

8 A. Yes.

9 Q. So the information on that form is put there by the gun
10 dealer, right?

11 MS. RAVENER: Objection, your Honor; foundation,
12 speculation.

13 THE COURT: Thank you.

14 Counsel, can you rephrase?

15 BY MS. NECHELES:

16 Q. Well, sir, is it your understanding that a gun dealer fills
17 out this form?

18 A. Yes.

19 Q. The next page is the actual bill of sale from the gun
20 dealer, right?

21 A. Yes.

22 Q. If you look at the handwriting there, and we look back at
23 the prior page, it's the same handwriting, right?

24 MS. RAVENER: Objection.

25 THE COURT: Sustained.

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Ochetal - Cross

1 BY MS. NECHELES:

2 Q. To you, does that look like the same handwriting?

3 MS. RAVENER: Objection, your Honor.

4 THE COURT: Sustained.

5 MS. NECHELES: Your Honor, can we approach on that?

6 THE COURT: Please come on up.

7 (Continued on next page)

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Ochetal - Cross

1 (At the sidebar)

2 THE COURT: There's an objection.

3 MS. RAVENER: Your Honor, this is improper argument.
4 This witness -- first of all, these are matters for the jury.
5 Second of all, there's no foundation that this witness knows
6 anything about this document. He hasn't testified that he
7 dealt with it in any fashion. He has explained that this is
8 not even the kind of document he would fill out or deal with.

9 For counsel to be seeking a lay opinion from this
10 witness about matching up handwriting is argument that counsel
11 is entitled to make in closing, but it's not properly a
12 question put to this witness. That is for the jury to judge.

13 THE COURT: Thank you.

14 MS. NECHELES: Judge, two things. They showed him
15 this document on direct examination, and they made a big point
16 about how it had inaccurate information.

17 MS. RAVENER: Did not.

18 MS. NECHELES: Or it says that he's a manager, and
19 they're going to argue that that was false information from
20 Mr. Reichberg.

21 Number two, the case law is very clear: Anybody can
22 give an opinion. You can ask a layperson about opinion on
23 handwriting. There's case after case. I don't have them right
24 here, but that is standard. That is well-accepted law. You
25 can ask a lay witness about handwriting. You don't need a

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Ochetal - Cross

1 handwriting expert.

2 THE COURT: I'm sorry --

3 MS. NECHELES: Does that appear to you to be the same
4 handwriting? The jury is going to decide. They'll look at it,
5 and they'll decide, but you're allowed to ask a lay witness,
6 does that appear to you to be the same handwriting because
7 normal people can make that guess or determination.

8 MS. RAVENER: Which is why the jury can make that
9 determination, Ms. Necheles.

10 MS. NECHELES: You're allowed to ask a lay witness.

11 MS. RAVENER: To be clear, there's no basis to think
12 this witness has any familiarity with this particular
13 handwriting.

14 Furthermore, this portion of the document was not
15 shown to this witness. The portion --

16 MS. NECHELES: Judge, you can't --

17 THE COURT: I'm sorry.

18 MS. NECHELES: You're right.

19 THE COURT: That's fine.

20 Go ahead.

21 MS. RAVENER: The portion shown to the witness was the
22 actual copy of the license, which he testified he printed out.
23 So, in any event, I think Ms. Necheles has made the point,
24 laypeople can match up handwriting. That is the province of
25 the jury. This witness has no specialized knowledge to assist

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Ochetal - Cross

1 them in that.

2 THE COURT: Thank you.

3 Counsel, how much more time do you anticipate?

4 MS. NECHELES: Probably about -- I'm going to try to
5 finish by the end, by 2:00, your Honor, and then I think
6 Mr. Meringolo has a little bit.

7 THE COURT: Thank you.

8 Let's move on this. I will invite you to write me
9 about the question of whether or not this is a witness that can
10 provide testimony. As I understand it, he's not seen this
11 document before, so this is purely a request that he look at
12 handwriting on one page and compare it to the other.

13 It would be good if we could finish up at least on
14 cross-examination today.

15 MS. NECHELES: And just leave that portion, leave the
16 cross open, so we can deal with that --

17 THE COURT: We can set that aside, that's fine, for
18 that one thing.

19 MS. NECHELES: -- on Monday?

20 THE COURT: Thank you.

21 MS. NECHELES: Thanks.

22 (Continued on next page)

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Ochetal - Cross

1 (In open court)

2 THE COURT: Good. Thank you. Counsel, you can
3 proceed. I'm sorry for the interruption.

4 MS. NECHELES: Thank you, your Honor.

5 BY MS. NECHELES:

6 Q. If you turn the page to the next page, just to be clear,
7 that document is the receipt from for the sale of the gun,
8 right?

9 MS. RAVENER: Objection.

10 THE COURT: You can answer the question if you can
11 respond.

12 A. Yes, it looks like a receipt, sure.

13 Q. Okay. So when you testified --

14 MS. RAVENER: Your Honor, move to strike. This
15 witness is guessing about the contents.

16 THE COURT: Thank you.

17 Can you rephrase the question, counsel.

18 Q. All right. Well, let me ask it this way: Does this
19 refresh your recollection that your testimony on direct that
20 Mr. Reichberg brought -- surrendered his gun to the licensing
21 division was an error, that in fact --

22 MS. RAVENER: Objection; mischaracterizes the
23 testimony.

24 THE COURT: Thank you.

25 Counsel, can you rephrase.

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Ochetal - Cross

1 MS. NECHELES: Okay. Maybe I'm mistaken.

2 Q. Did you testify on direct that Mr. Reichberg surrendered
3 his gun to the licensing division?

4 A. Yes. And by surrendering, you have two options: One, to
5 voucher it at a precinct, and another is to take it to an FFL
6 dealer and have it stored there.

7 Q. Okay. I understand now.

8 So it's not that he came in to the precinct and gave
9 over his gun --

10 A. He's not supposed to.

11 Q. He's not supposed to?

12 MS. RAVENER: Objection; foundation.

13 THE COURT: Thank you. Sustained.

14 Q. So what you meant by surrender his gun is that he sold his
15 gun; is that correct?

16 MS. RAVENER: Objection; foundation.

17 THE COURT: Thank you.

18 Counsel, can you rephrase.

19 Q. Okay. Sir, when you said surrender his gun, what did you
20 mean by that?

21 A. Relinquished it.

22 Q. One of the ways to relinquish that is to sell it; is that
23 correct?

24 A. You are allowed to sell it.

25 Q. And then you would have to -- when someone buys the gun,

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Ochetal - Cross

1 they're required to give notice to the licensing division,
2 right?

3 A. Well, anytime somebody buys a firearm, it has to be
4 noticed -- the person who buys the firearm needs a purchase
5 order anyway, so that's a different process in itself as far as
6 purchasing.

7 Q. Okay.

8 A. A dealer doesn't have the same guidelines.

9 Q. A dealer has a different guideline than an individual,
10 correct? Is that what you're saying?

11 A. Yes.

12 Q. But going back to the first page of this -- would this
13 document be filed by the individual or would it also be filed
14 by the dealer? And just directing your attention to the middle
15 of this, it has a stamp.

16 A. Well, the dealer would need a copy of it because of the --
17 they might not necessarily need this copy. What they do need
18 is the log number. At the bottom left there's a log number --
19 I can't see it. It's 85/2016. The dealer needs that log
20 number.

21 Q. Let's go back to that. That's the number you talked about,
22 right?

23 A. Yes.

24 Q. Where would he get that log number from?

25 A. He would get that from the licensing division.

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Ochetal - Cross

1 Q. Okay. So, going back --

2 A. So a licensee needs permission to sell a firearm.

3 Q. Okay.

4 A. Once they get permission, a log number is generated. The
5 dealer gets this log number. The dealer should be getting this
6 form, but as long as the dealer has this log number, he can log
7 it into his book of inventory. This way, he's legit for taking
8 in the firearm.

9 Q. This document, you can see at the top, there is an
10 indication that it was faxed on April 28, 2014?

11 A. You said April 28?

12 MS. RAVENER: Objection.

13 THE COURT: Thank you.

14 Counsel?

15 MS. NECHELES: I don't understand the objection.

16 MS. RAVENER: Your Honor, this is --

17 THE COURT: Are you asking him to read what's in the
18 exhibit?

19 MS. NECHELES: I'll withdraw that, your Honor.

20 MS. RAVENER: The characterization is out --

21 MS. NECHELES: I'll withdraw it.

22 THE COURT: Thank you.

23 BY MS. NECHELES:

24 Q. These documents, altogether, would notify the licensing
25 division that Mr. Reichberg had in fact surrendered his gun,

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Ochetal - Cross

1 correct?

2 A. Yes, it would let us know that he surrendered his gun.

3 Q. And these documents, altogether, would be provided to the
4 licensing division, right?

5 A. That, along with the proper receipts that he -- the
6 licensee disposed of the firearm is what we would need, either
7 that or a property clerk invoice.

8 Q. Or, I'm sorry, what was the last part?

9 A. If somebody turned the gun into a precinct rather than into
10 a dealership, there would be a voucher from the precinct.

11 Q. Okay. So now, there came a time, am I correct, when you
12 learned that Mr. Lichtenstein, Shaya Lichtenstein, who you've
13 testified about, was arrested, right?

14 A. Yes.

15 Q. Am I correct that when that occurred, Mr. Villanueva called
16 you? Right?

17 A. When it occurred?

18 Q. After that, Mr. Villanueva called you to discuss that?

19 A. He didn't call me to discuss it, no.

20 Q. Well, he wanted to coordinate with you, right?

21 A. No. If it's the day you're referring to when the FBI
22 visited me at my residence and as well as Sergeant Villanueva,
23 later that day, in the afternoon, me and Dave exchanged a
24 couple of brief text messages. Basically, I said to him, so
25 I'll see you upstairs? He said, yeah. I'm like, so we're in

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Ochetal - Cross

1 the same boat. Because after we got visited, we were also
2 visited by internal affairs and told that we would be on
3 modified assignment, and to report to, I don't know, the tenth
4 floor maybe, upstairs in the building. So that's where I said,
5 so I guess I'll see you upstairs.

6 He said, yep, we're in the same boat. And he said,
7 all Paul, and kind of left it at that.

8 MS. NECHELES: Your Honor, I see that it's
9 2:00 o'clock.

10 THE COURT: Yes.

11 MS. NECHELES: I have a bit more. I'm sorry.

12 THE COURT: That's fine.

13 Is this a reasonable time for us to break, counsel?

14 MS. NECHELES: Yes, your Honor.

15 THE COURT: Good. Thank you.

16 MS. RAVENER: Your Honor, I would just ask that if
17 Ms. Necheles is close to wrapping up her questions --

18 MS. NECHELES: I'm not, your Honor.

19 MS. RAVENER: -- that she do so.

20 MS. NECHELES: I'm not.

21 THE COURT: Thank you. Fine.

22 So, ladies and gentlemen, it's Friday afternoon, so
23 we're going to end a little bit early today. During this
24 recess, over the weekend, please don't talk about the case with
25 anyone else -- that means with your family members or

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Ochetal - Cross

1 friends -- about how the trial is going. You can tell them,
2 again, that you're jurors in a criminal case, and that's about
3 it. Don't talk about this with each other in the intervening
4 period, and don't do any research about the case, or if you
5 happen to come across any press that there may be about the
6 case, please don't look at it or read it.

7 With that, thank you very much for all your work this
8 week. I'll see you Monday morning at the normal time,
9 9:00 a.m. Thank you.

10 (Continued on next page)

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Ochetal - Cross

1 (Jury not present)

2 THE COURT: Thank you very much. You can be seated.

3 So, Mr. Ochetal, thank you again. I'd like to ask
4 you, as before, not to talk about this case or the subject
5 matter of your testimony, with anyone during this break. I
6 emphasized it before, but that's particularly true with respect
7 to the United States.

8 I expect that we will be starting back up on Monday
9 morning, probably around 9:00, so please be ready to go at
10 9:00 here.

11 Now, when I say that you can't talk about the case
12 with government, the one limited exception to that is that you
13 can talk with one of the representatives about scheduling here,
14 to the extent that that's an issue, but you should just expect
15 we will be beginning here around 9:15 on Monday morning, so if
16 you could please be here by 9:00.

17 THE WITNESS: No problem.

18 THE COURT: Good. Thank you very much. Have a good
19 weekend.

20 THE WITNESS: You too.

21 (Witness temporarily excused)

22 THE COURT: Good.

23 So, counsel, I know that Mr. Reichberg needs to leave,
24 so I'd like to facilitate that. Can we take our recess now?
25 Are there issues that we can or should take up outside of

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Ochetal - Cross

1 Mr. Reichberg's presence? That's completely up to you.

2 Counsel for the defendants?

3 MS. NECHELES: Your Honor, I'm not sure there are
4 issues, but I guess maybe we can work out the language of the
5 instruction, unless you wanted to look at it more -- or the
6 government -- but he is certainly excused.

7 THE COURT: Thank you. That's fine.

8 Mr. Reichberg.

9 MS. NECHELES: He waives his appearance.

10 THE COURT: Mr. Reichberg, you're certainly excused.
11 Based on that, we will take up the very limited issues in your
12 absence. Thank you.

13 MR. BELL: We have no issues to take up, your Honor.

14 THE COURT: Good. Thank you.

15 Mr. Grant, anything you want to raise?

16 MR. MERINGOLO: No, no, your Honor.

17 THE COURT: Thank you.

18 I do need to read you this decision on the expert
19 testimony. I think it's going to take about 15 or 20 minutes,
20 and I can probably do it in the morning before we start on
21 morning before we start, so I'll just do that.

22 Counsel, the issue related, that unfortunately my
23 example has sparked -- I'm happy it sparked it -- it's
24 something that we should resolve before closing arguments. I
25 think that it's something the parties should talk about and

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Ochetal - Cross

1 look at the law on.

2 I think that Ms. Necheles' comment is -- in essence,
3 taking the "it's raining outside" comment as the baseline for
4 this -- is that if the government can say to oppose a fact --
5 so, say, using this hypothetical, one of the alleged
6 coconspirators says, it's raining outside, that can be taken
7 for the truth of the matter. The question is, can the
8 government then say, it's true that the alleged coconspirator
9 said it's raining outside but lots of other people who are not
10 coconspirators said it's not raining outside, and have those
11 other statements not introduced for the truth of the matter but
12 used as a counterbalance to the actual evidence. I see that as
13 the baseline question and why it is that the existence of those
14 statements and the use of those statements in that way is
15 different from using them to establish the truth of the matter.

16 Is that a fair characterization of your concern,
17 Ms. Necheles?

18 MS. NECHELES: Yes, using someone's belief to show
19 that it is true, which is the same as putting it in for the
20 truth. I don't understand the difference. If they're arguing,
21 yes -- well, they're saying, lots of people believed it. I
22 haven't had the opportunity to cross-examine her, to say, did
23 you believe this, or, are you confused in what you're saying,
24 did you believe what the government is saying, or are you
25 confused about it? And I should be able to cross-examine her,

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Ochetal - Cross

1 because what she is saying is, I believed the following to be
2 true. That's what her statement is. And the government wants
3 to put that in for the truth of it, to argue that this person
4 believed it also, that that's true.

5 MR. BELL: Your Honor, it's actually, I think, fairly
6 simple to express in argument. The import that we are
7 suggesting, that other people were saying it, literally does
8 not change, or is no less successful, whether that statement
9 was true or false. It is not being offered for its truth.

10 I think that we would be agreeable with something akin
11 to your Honor's formulation, which was just that it was said.
12 But to suggest that there is no nontruth purpose for that sort
13 of statement is incorrect. It's incorrect as a practical
14 matter, it's incorrect as a matter of law.

15 THE COURT: Thank you. That's the question. I think
16 I may benefit from briefing on it. I'm using the "it's raining
17 outside" example just for illustrative purposes, but the
18 particular example that was raised earlier today might actually
19 be a better way to look at it, as you're considering how it is
20 that the issue is going to be presented here. I don't think we
21 need to resolve it at this moment, but it is a relatively
22 fundamental evidentiary question, one about which both sets of
23 lawyers, whose views I respect, differ. So I think it would be
24 beneficial for you, both sides, to look at the law on this and
25 tell me what you think the right answer is.

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Ochetal - Cross

1 Can I see you all at sidebar just really briefly
2 before we end for the weekend.

3 (Pages 2045 - 2047 redacted by order of the Court)

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Ochetal - Cross

1 (In open court)

2 THE COURT: Thank you very much. I'll see you Monday
3 morning.

4 (Adjourned to November 19, 2018 at 9:00 a.m.)

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RICHARD OCHETAL	
Direct By Ms. Ravener1893
Cross By Ms. Necheles1943

GOVERNMENT EXHIBITS

Exhibit No.	Received
7301932
3515-021936